

IN THE
SUPREME COURT OF THE UNITED STATES

SEP 5 1979

MICHAEL ROBAK, JR., CLERK

October Term, 1979

No.

79-370

SCHOOL DISTRICT OF PHILADELPHIA, *Petitioner*

v.

CHARLES J. LAFFERTY, JOHN W. LAFFERTY,
RONALD C. LAFFERTY AND MARY LAFFERTY, *Respondents*

**PETITION FOR WRIT OF CERTIORARI TO
THE PENNSYLVANIA SUPREME COURT**

Marvin Comisky
Goncer M. Krestal
Alan C. Gershenson
1100 Four Penn Center Plaza
Philadelphia, Pa. 19103
(215) 569-3700

Eugene F. Brazil
THE SCHOOL DISTRICT OF
PHILADELPHIA
21st and The Parkway
Philadelphia, Pa. 19103
(215) 299-7676
Attorneys for Petitioner

Of Counsel:

BLANK, ROME, COMISKY & McCAULEY
1100 Four Penn Center Plaza
Philadelphia, Pa. 19103

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IN THE
SUPREME COURT OF THE UNITED STATES

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No.

SCHOOL DISTRICT OF PHILADELPHIA, *Petitioner*

v.

CHARLES J. LAFFERTY, JOHN W. LAFFERTY,
RONALD C. LAFFERTY AND MARY LAFFERTY, *Respondents*

PETITION FOR WRIT OF CERTIORARI
TO THE PENNSYLVANIA SUPREME COURT

Petitioner, the School District of Philadelphia, respectfully prays that a writ of certiorari issue to review the Order of the Pennsylvania Supreme Court entered on June 8, 1979, denying its petition for allowance of appeal in this proceeding.

OPINIONS BELOW

The Order of the Pennsylvania Supreme Court dated June 8, 1979, is not reported; the official notice of the entry of the Order is printed in the Appendix hereto (A1). The Order of the Pennsylvania Commonwealth Court quashing the District's appeal is not reported, but is printed in the Appendix (A6). The Opinion and Order of the Court of Common Pleas of Philadelphia County denying the District's petition to quash mandamus and to strike judgment are not reported and are printed in the Appendix (A7). The earlier opinions and orders of each of the above courts relating to the District's motion for new trial are also printed in the Appendix (A22, A30, A40, A46). The Opinion of the Pennsylvania Commonwealth Court in that connection is reported at 27 Pa. Comm. Ct. 80, 365, A.2d 1322 (1976).

JURISDICTION

The Order of the Pennsylvania Supreme Court was entered on June 8, 1979. This petition for certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Should *United States v. Throckmorton*, 98 U.S. 61 (1878), holding that judgments obtained by perjury and other intrinsic fraud are not subject to subsequent attack, be expressly overruled as violative of the due process clause of the Fourteenth Amendment to the United States Constitution?

2. Does the peremptory denial by a state court of a petition to strike a judgment entered by the court in a civil action, which petition is based upon an admission made by

the prevailing party during the course of a subsequent criminal trial for perjury that his earlier material testimony in the civil trial was false, constitute a violation of due process as protected under the Fourteenth Amendment to the United States Constitution where the perjurious testimony prevented the defrauded party from effectively presenting its case?

CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in pertinent part, as follows:

"... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This matter arises out of the condemnation by the School District of Philadelphia ("District") of real estate owned by Charles J. Lafferty, John W. Lafferty, Ronald C. Lafferty and Mary Lafferty ("Owners") and used as a machine shop. The Owners, in vacating the premises, left machinery and equipment, nearly all of which was in excess of 28 years of age and had been purchased used.

In the eminent domain proceeding, tried before a jury in the Court of Common Pleas of Philadelphia County, Owners claimed damages for the machinery and equipment, as well as the real estate, asserting that the machinery could not be moved without substantial injury thereto. This assertion was based upon the testimony of one of the Owners, Charles J. Lafferty, that the machinery

had been weakened by the enlargement of holes in the base for the purpose of replacing the original bearings with bearings of a different type and larger size.¹ Mr. Lafferty's testimony concerning these modifications was also relied upon by Owners' expert witnesses in expressing opinions as to the value of the machinery and equipment. The jury rendered a verdict in Owners' favor in the total amount of \$962,000.00, including a special finding of \$700,000.00 for the machinery and equipment.²

Subsequent to the trial, the District discovered evidence which indicated that the machinery was in fact not modified as testified by Mr. Lafferty. This "after discovered evidence" was included by the District as one of numerous grounds for seeking a new trial. The District's motion for a new trial was denied by the trial court (A22), which denial was affirmed by the Pennsylvania Commonwealth Court (A30). Petitions for allowance of appeal and reconsideration thereof were, after a period of 1½ years, denied by the Pennsylvania Supreme Court (A46), this last action occurring on August 3, 1978.

After the civil trial and the affirmance by the Pennsylvania Commonwealth Court, Charles J. Lafferty was indicted and tried for perjury as to his testimony during the condemnation proceedings. At the trial on the perjury charges,³ held in February and March 1978, Mr. Lafferty specifically admitted the falsity of his civil trial testimony. He stated in answers to direct questions that the testimony he gave before the civil jury as to the replacement of the bearings and enlargement of the holes in the machinery

1. Excerpts from Mr. Lafferty's testimony in the eminent domain trial are reproduced in the Appendix (A47-A61).

2. The District's expert witness, on the other hand, testified that, on the assumption that the machinery and equipment had not been modified, it could be moved to Owners' new location for a cost of \$51,000.00.

3. Relevant excerpts from Mr. Lafferty's testimony in the criminal trial are reproduced in the Appendix (A-62-A66).

was false (A62-A66); that he fabricated his testimony in this respect on the morning that he took the stand (A64); and that he had not testified as to this subject before the Board of View (A66). A guilty verdict was returned against Mr. Lafferty on March 27, 1978. The trial judge reversed the guilty verdict on the basis of excess prosecutorial misconduct and directed a new trial. The trial judge denied Lafferty's motion in arrest of judgment (directed verdict). Lafferty has appealed this denial and his appeal is presently pending in the Superior Court of Pennsylvania.

The District awaited the ruling on its petition for appeal by the Pennsylvania Supreme Court and, when it was denied on August 3, 1978, filed a petition in the eminent domain proceedings seeking, *inter alia*, to strike the judgment ("petition to strike judgment") on the basis of Mr. Lafferty's admission during the criminal trial that his testimony in the condemnation proceedings was *false*. In support of its petition to strike judgment the District advanced the fundamental precept that enforcement of a judgment resting upon perjurious testimony constitutes a deprivation of due process of law in violation of the Fourteenth Amendment to the United States Constitution. By Order dated February 14, 1979 (A13), the trial court denied the petition to strike the judgment without addressing the constitutional issue. The Court recognized that it had the power to strike the judgment if it had been obtained by means of "extrinsic fraud". It held, however, that under Pennsylvania law, there was "... no basis for the Court to ..." strike the judgment due to admittedly false testimony, because false testimony constitutes "intrinsic" fraud (A10-11).

Without permitting the District to present an argument upon the merits, the Pennsylvania Commonwealth Court, on April 16, 1979, quashed the District's appeal from the denial of the petition to strike judgment on the ground that the appeal constituted "... an effort to collaterally attack the judgment in the eminent domain proceedings" (A6). A

petition for allowance of appeal to the Pennsylvania Supreme Court, which was expressly grounded upon the due process clause of the Fourteenth Amendment, was denied without opinion.

REASONS FOR GRANTING THE WRIT

The refusal by the Pennsylvania state courts to strike the judgment entered in Owners' favor in the eminent domain action despite, in a subsequent criminal trial for perjury based on perjurious testimony in the eminent domain proceedings, the *judicial admission* by Charles J. Lafferty that his testimony was knowingly false, constitutes a violation of the due process clause of the Fourteenth Amendment to the United States Constitution under the standards established by the decisions of this Court. Moreover, the state courts, in refusing to strike the judgment for admitted false testimony, relied upon this Court's decision in *United States v. Throckmorton*, 98 U.S. 61 (1878), which was undermined by this Court's subsequent opinion in *Marshall v. Holmes*, 141 U.S. 589 (1891), and which has been nullified in federal practice by the promulgation of Rule 60(b)(3) of the Federal Rules of Civil Procedure.

1. **This Court Should Overrule *United States v. Throckmorton*, 98 U.S. 61 (1878), Because Its Continued Existence Leads to Conflict and Confusion, and Decisions Which Are Grossly Unjust and Violative of Due Process.**

The state trial court denied the District's petition to strike judgment principally on the basis of this Court's opinion in *United States v. Throckmorton*, *supra*, and upon Pennsylvania appellate decisions which in turn also expressly relied upon *Throckmorton*. See, e.g., *Sallada v. Mock*, 277 Pa. 285, 121 A. 54 (1923); *Greiner v. Brubaker*, 151 Pa. Super. 515, 30 A.2d 621 (1943), cert. denied. 320

U.S. 742, rehearing denied, 320 U.S. 813, rehearing denied, 320 U.S. 816 (1943). Those decisions make a distinction between judgments obtained by extrinsic fraud, which are subject to subsequent attack, and judgments obtained by intrinsic fraud, such as perjury, which are not.

Throckmorton was decided by this Court solely as a matter of federal procedural law and did not discuss the problem as involving a constitutional issue. The principal reasoning in support of the distinction made in *Throckmorton* between judgments obtained by extrinsic and intrinsic fraud was to preserve the sanctity of judgments with respect to factual issues previously litigated, whether or not the defrauded party was unfairly prevented from properly litigating the facts because of the fraud. Aside from the difficulty in distinguishing whether a particular fraud is intrinsic or extrinsic within the rule, it is further impossible to distinguish the effect on the finality of a judgment if challenged on the ground of extrinsic fraud or intrinsic fraud. In either event, the factual issues already litigated must be retried. In both events, the question should be whether a party has been improperly prevented from fully contesting the factual issues, and not whether the judicial system will be inconvenienced by the relitigation of a matter previously litigated.

Moreover, this Court, in its subsequent opinion in *Marshall v. Holmes*, *supra*, expressed a view that at least some civil judgments obtained by intrinsic fraud should be set aside on grounds substantially similar to the standards of due process (141 U.S. at 596):

"While, as a general rule, a defense cannot be set up in equity which has been fully and fairly tried at law, and although, in view of the large powers now exercised by courts of law over their judgments, a court of United States, sitting in equity, will not assume to control such judgments for the purpose simply of giving a new trial, it is the settled doctrine

that 'any fact which clearly proves it to be against conscience to execute a judgment, and of which the injured party could not have availed himself in a court of law, or of which he might have availed himself at law, but was prevented by fraud or accident, unmixed with any fault or negligence in himself or his agents, will justify an application to a court of chancery.' . . ." (Emphasis added.)

More recently, this Court, although citing both *Throckmorton* and *Marshall*, did not find it necessary to distinguish between extrinsic and intrinsic fraud where the issue was relief from a judgment because of fraud perpetrated upon the court which rendered the judgment. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

Several federal courts and commentators, including one of the most respected commentators in the field, have perceived and wrestled with the conflict between this Court's decisions in *Throckmorton* and *Marshall*. *Griffith v. Bank of New York*, 147 F.2d 899 (2d Cir. 1945), cert. den., 325 U.S. 874 (1945); *Publicker v. Shallcross*, 106 F.2d 949 (3d Cir. 1939), cert. den., 308 U.S. 624 (1940); *Graver v. Faurot*, 64 F. 241 (C.C.N.D. Ill. 1894), rev'd 76 F. 257 (7th Cir. 1896), cert. dismiss'd, 162 U.S. 435 (1896); *Lockwood v. Bowles*, 46 F.R.D. 625 (D.D.C. 1969); 7 *Moore's Federal Practice* ¶60.37 [1], at 615-620.

Indeed, in *Publicker v. Shallcross*, *supra*, the Court of Appeals for the Third Circuit stated that "we do not believe it [*Throckmorton*] is the law of the Supreme Court today". 106 F.2d at 950. That Court, after extensive analysis, further stated (106 F.2d at 952):

"In our judgment, and if the case arises, the harsh rules of *United States v. Throckmorton* . . . will be modified in accordance with the more salutary doctrine of *Marshall v. Holmes* . . . We believe truth is more important than the trouble it takes to get it."

In his treatise Professor Moore has been equally critical of strict adherence to *Throckmorton* and its progeny. See 7 *Moore's Federal Practice*, *supra*.

Moreover, this Court has, for federal practice, expressly overruled the distinction between intrinsic and extrinsic fraud by promulgating Rule 60(b)(3) of the Federal Rules of Civil Procedure. That Rule allows federal district courts to provide relief from a final judgment for reasons of fraud "whether heretofore denominated intrinsic or extrinsic". The same rationale of fairness which caused the promulgation of Rule 60(b)(3) should be applied to state court proceedings as a matter of basic due process. This is certainly the view of some state courts which follow a rule, contrary to *Throckmorton*, of permitting judgments obtained by intrinsic fraud to be set aside. *Boring v. Ott*, 138 Wis. 260, 119 N.W. 865 (1909); *Laun v. Kipp*, 155 Wis. 347, 145 N.W. 183, 5 A.L.R. 655 (1914).⁴

A judgment based upon fraud should have no validity in our society and should be subject to being stricken where the fraud has prevented the defrauded party from effectively presenting his case. It is the District's position, moreover, that such relief must be afforded by the federal courts and state courts a matter of due process of law under the Fifth and Fourteenth Amendments to the United States Constitution. To the extent *Throckmorton*, read in light of *Marshall v. Holmes*, can be so interpreted, this Court should issue a writ of certiorari to correct the improper reliance by the state courts upon *Throckmorton* and its progeny. To the extent that *Throckmorton* states a contrary rule of law, this Court should issue a writ of certiorari to overrule *Throckmorton* expressly so that the state courts will no longer render misguided and unconstitutional decisions predicated upon it.

4. For a recitation of the confusion and conflict which *Throckmorton* has created, see 7 *Moore's Federal Practice*, *supra*.

2. The State Courts' Refusal To Strike a Judgment Obtained by Intentionally False Testimony Violates the Due Process Standards Established by This Court and Impugns the Integrity of the Nation's Judicial Process by Encouraging Perjury.

The judgment entered in Owners' favor in the state eminent domain proceedings was fraudulently obtained by the admitted false testimony of one of the Owners, Charles J. Lafferty. Notwithstanding this reprehensible conduct by a party and principal witness in the action, the state courts not only refused to strike or vacate the judgment on the basis of Mr. Lafferty's false testimony, but refused even to hold a hearing to determine the facts relating to Mr. Lafferty's admission that he had testified falsely. Although a state procedure exists to set aside judgment obtained by fraud, the state courts ruled that this procedure does not apply to judgments obtained by false testimony (A10-11).

Mr. Lafferty's false testimony was material to the determination of damages and deprived the District of a fair hearing with respect to the value of the condemned property. The insufficiency of the hearing is emphasized by Mr. Lafferty's further admissions during the criminal trial that he had not testified as to the replacement of the bearings in the original hearing before the Board of View and did not formulate his testimony regarding the bearings until the morning that he testified. The District could not possibly have anticipated Mr. Lafferty's testimony in this respect and was unable to effectively cross-examine him with regard thereto.

Where state court procedures effectively prevent a litigant from receiving a fair hearing, this Court has found such procedures to violate constitutional due process. *Armstrong v. Menzo*, 380 U.S. 545 (1965); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

The action of the state courts in refusing to strike the judgment and in permitting the judgment to be enforced,

notwithstanding Mr. Lafferty's admission that his testimony was false has effectively deprived the District of a hearing. By espousing a rule that judgments obtained by false testimony will not be stricken under any circumstances, the state courts have given the appearance of encouraging litigants to give false testimony, provided that falsity thereof can be concealed until after judgment has been entered. Such an appearance may seriously undermine public faith in the integrity of our judicial system and should not be countenanced, especially where, as here, the defrauded party deals with public funds.

On numerous occasions this Court has ruled that a criminal conviction obtained by the use of false testimony is constitutionally tainted and must be set aside and vacated for lack of due process. See, e.g., *Giglio v. United States*, 405 U.S. 150 (1972); *Napue v. Illinois*, 360 U.S. 264 (1959); *Mooney v. Holohan*, 294 U.S. 103 (1935).

Although these cases have all involved instances where the falsity of the testimony was known or should have been known to the prosecutor, a careful reading of this Court's opinions in these and other cases indicates that the standards of due process are not so restricted. Indeed, in *Mooney v. Holohan*, 294 U.S. at 113, this Court recognized that due process may be denied by "any action of a state, whether through its legislature, through its courts, or through its executive or administrative officers". (Emphasis added.) In this regard, the petitioner has argued that (294 U.S. at 110):

"[t]he state deprives him of his liberty by its failure, in the circumstances set forth, to provide any corrective judicial process by which a conviction so obtained may be set aside."

The Court accepted this premise as correct, but denied relief to the petitioner because a state corrective process existed which petitioner had failed to exhaust. In recognizing that the failure of a state court to provide corrective

judicial process to remedy an alleged wrong is a denial of due process, the Court cited *Frank v. Mangum*, 237 U.S. 309 (1915) and *Moore v. Dempsey*, 261 U.S. 86 (1923), in which the alleged wrongs were caused by private individuals, not state officials.

In *Mapp v. Ohio*, 367 U.S. 643 (1961), this Court confronted the issue of whether state courts should be forced to adopt, as a matter of constitutional due process, a rule of exclusion of illegally seized evidence in criminal prosecutions. On the one hand, the Court conceded that such a rule might permit some criminals to go free because "a constable has blundered". On the other hand, the Court could find no other corrective judicial process which would ensure that individuals' constitutional rights would be honored by law enforcement officials. Possibly the determinative factor in favor of constitutional application of the exclusionary rule was what the Court referred to as "the imperative of judicial integrity".

In the present case, there is also "the imperative of judicial integrity"—litigants should not be led to believe that there is any possible advantage to be gained by perjury. Weighted against that imperative is the legitimate interest in finality of judgments. The District submits that this interest is less weighty than the integrity of the judicial system. Any rule of law which peremptorily precludes an attack upon a judgment procured by testimony which the witness, in his subsequent perjury trial, admits to have been false on a material issue, must be held to violate due process. A failure so to find would effectively deny the defrauded party a fair hearing, impugn the integrity of the judicial system, and encourage perjury.

This Court should grant certiorari to resolve this important constitutional issue which goes to the very integrity of our judicial system, especially since the decisions of the state courts which deny due process are predicated upon a now emasculated, but never overruled, decision of this Court.

CONCLUSION

For the above reasons, a writ of certiorari should issue to review the order of the Pennsylvania Supreme Court.

Respectfully submitted,

Marvin Comisky
Goncer M. Krestal
Alan C. Gershenson
1100 Four Penn Center Plaza
Philadelphia, Pa. 19103
(215) 569-3700

Eugene F. Brazil
THE SCHOOL DISTRICT OF
PHILADELPHIA
21st and The Parkway
Philadelphia, Pa. 19103
(215) 299-7676
Attorneys for Petitioner

Of Counsel:

BLANK, ROME, COMISKY & MCCAULEY
1100 Four Penn Center Plaza
Philadelphia, Pa. 19103

Appendix A

APPENDIX A.

**Notice of Order of the Pennsylvania Supreme Court
Denying the Petition for Allowance of Appeal of the
Philadelphia School District.**

**SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

SALLY MRVOS
Prothonotary
CATHERINE E. LYDEN
Deputy Prothonotary

456 City Hall
Philadelphia, 19107
(215) 686-3581/84

June 11, 1979

Eugene F. Brazil, Esq.,
The School District of Philadelphia
21st and the Parkway
Phila., Pa. 19103

In re: Charles J. Lafferty et al., v.
The School District of Philadelphia
et al., Petitioner.
No. 4270 Allocatur Docket

DEAR MR. BRAZIL:

This is to advise you that on June 8, 1979 the Supreme Court entered its Order denying the Petition for Allowance of Appeal in the above-captioned matter.

Very truly yours,

Sally Mrvos
Prothonotary

SM:mb

CC: Augustus Sigismondi, Esq.

APPENDIX B.

Petition for Allowance of Appeal to Pennsylvania Supreme Court from Order of Commonwealth Court Quashing Appeal from Denial of Petition to Strike Judgment.

IN THE
SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CHARLES J. LAFFERTY, JOHN :
W. LAFFERTY, RONALD LAFFERTY :
AND MARY LAFFERTY :
vs. : No. 4270

THE SCHOOL DISTRICT OF
PHILADELPHIA, ET AL. :

PETITION FOR ALLOWANCE OF APPEAL

The Petitioner, The School District of Philadelphia, through its General Counsel, Eugene F. Brazil, files a Petition for Allowance of Appeal as follows:

1. The School District of Philadelphia condemned the premises belonging to Charles Lafferty, et al. on February 5, 1970.

2. The Plaintiffs vacated the property on September 6, 1972, leaving machinery and equipment in the buildings and claiming that the machinery and equipment could not be moved without substantial injury to the machinery.

3. In a jury trial on June 25, 1974 the jury awarded damages to the Plaintiff in the amount of \$700,000 for the machinery and equipment. The School District's witness testified that the machinery and equipment were movable and could be moved for \$51,000.

4. The Plaintiff testified at this trial that the ma-

chinery could not be moved because the bore holes in the machine were enlarged, thereby weakening the base of the machine and that old-fashioned sleeve bearings were replaced with modern roller bearings, all of which prevented the machines from being moved.

5. Subsequent to the trial, The School District of Philadelphia filed motions for a new trial. One of the reasons given for a new trial was after discovered evidence.

6. Subsequent to the denial of a new trial, Defendant, School District, continued its examination of Plaintiff's machines and determined that there was large scale falsehood in the testimony of Plaintiff. The matter was referred to the District Attorney's office and Plaintiff was tried for perjury. The Plaintiff in the criminal trial admitted under oath that he lied with respect to changing the size of the holes and the bearings in these machines. This information was not available to the trial court in denying the motion for a new trial, was not available to the Commonwealth Court in affirming a motion for a new trial, and was not available to the Pennsylvania Supreme Court in its denial for a Petition for Allowance of Appeal.

7. Petitioner, The School District of Philadelphia, has been denied its day in court. The Plaintiff's verdict is tainted by massive perjury.

The following testimony is taken from the Plaintiff's testimony in the criminal trial, in which he was a defendant, at Page 529:

"Q. Now, Sir, it's your testimony today that you testified as to certain information at that other trial, namely sleeve bearings and — excuse me — sleeve bearings and taper roller bearings, that you testified falsely. Is that correct?

A. Yes, I did.

Q. Sir, as to the size of the holes and the base of the machine, you testified falsely?

A. Yes, I did.

Q. And as to boring out those hubs behind the base of the machine, you testified falsely?

A. Yes, I did."

8. The lower court refused to consider the testimony of Charles J. Lafferty in the criminal case. The opinion of the lower court is attached hereto and marked Exhibit "A."

9. The trial judge in the condemnation case refused to hear Petitioner's Petition to Strike the Judgment, thus requiring the matter to be heard by a judge that was unfamiliar with the matter. It is Petitioner's contention that the perjury of Plaintiff was an affront to the dignity of the trial judge, and his refusal to hear the Petition to Strike the Judgment was error.

10. The rule that intrinsic evidence is not a basis for striking a judgment should only pertain to cases where the party had reason to know of the evidence prior to trial and not in a case such as this, where the Plaintiff in defending himself in the criminal case characterized his testimony in the civil case with the following language at Page 510:

"It makes no sense to me whatsoever."

This area of the law requires a thorough review by the Pennsylvania Supreme Court in light of the new standard of morality in the post Watergate era.

11. The Commonwealth Court erred in quashing Petitioner's appeal. A copy of the Order quashing the appeal is attached hereto as Exhibit "B." Petitioner had averred in its response to Mandamus Execution that all funds had been appropriated for the current fiscal year. The lower court directed that the judgment be paid in 30 days. If funds are required to keep the schools in operation and pay bond indebtedness, the judgment is to be paid from unappropriated funds and no contempt lies in such a case. Act of March 10, 1949, P.L. 30 Art. 21, §611, 24 P.S. §6-611; *Arlington Seating Co. v. New Phila. School District*, 317 Pa. 179.

12. The School District is presenting this case in a posture different from the situation when the matter was previously heard by your Honorable Court. To deny the Petitioner the opportunity to fully present its case would be a denial of due process under the United States Constitution.

To let this judgment stand will penalize the children of The School District of Philadelphia and deprive them of funds vitally needed for the educational program. To allow a judgment to stand where the underlying testimony is false rewards a wrongdoer.

Your Petitioner believes that an appeal should be allowed.

Respectfully submitted,

EUGENE F. BRAZIL
Attorney for The School District
of Philadelphia

APPENDIX C.

**Order of Pennsylvania Commonwealth Court Quashing
Appeal from Denial of Petition to Strike Judgment.**

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

THE SCHOOL DISTRICT OF
PHILADELPHIA :

Appellant:

v. :

CHARLES J. LAFFERTY
et al., :

Appellees: No. 542 C. D. 1979

ORDER

NOW, April 16, 1979, upon consideration of appellees' motion to quash and appellant's answer thereto, and it appearing that the appeal is an effort to collaterally attack the judgment in the eminent domain proceedings, a judgment which must be considered final in light of the affirmance by this Court and the Supreme Court's denial of allowance of appeal, the motion to quash is granted and the appeal is dismissed.

BY THE COURT:

s/ JAMES S. BOWMAN

P.J.

Certified From The Record
April 16, 1979
Francis C. Barbush
Chief Clerk

APPENDIX D.

Opinion and Order of the Court of Common Pleas of Philadelphia, County Denying Petition to Strike Judgment.

IN THE
COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
CIVIL DIVISION

CHARLES J. LAFFERTY, : FEBRUARY TERM, 1979⁹
JOHN W. LAFFERTY, :
RONALD LAFFERTY, AND : No. 942
MARY LAFFERTY :

vs. :

THE SCHOOL DISTRICT OF
PHILADELPHIA :

OPINION

DOTY, J.

This case comes before the Court on two different petitions and motions.

In the first, the plaintiff, on October 13, 1978, filed a praecipe for a writ of mandamus execution to enforce a judgment entered more than four years previous. The prothonotary issued said writ and directed that the School District pay \$962,000 with interest and costs. A writ of this kind requires no rule or return date and is issued as a matter of course where the judgment is final. The School District was served with the writ on October 17, 1978. The plaintiff, on October 31, 1978, then filed a petition for a writ of attachment with a rule granted upon the defendants (all of the School Board members and the Superintendent of Schools in his capacity as Secretary and Treasurer of

the School Board) to show cause why they should not be held in contempt. The petition was scheduled for argument in Motion Court on November 20, 1978, before the Honorable Ethan Allen Doty.

The defendants did not file an answer to the plaintiffs' petition. Instead, they filed a petition and had a rule granted upon the plaintiffs to show cause why the writ of mandamus execution should not be quashed and why the judgment in this matter should not be stricken. As with the first petition, this one was also scheduled for argument at the same time and place. Counsel for both sides appeared at the hearing and counsel for the plaintiffs submitted his answer to defendants' petition. After oral argument the Court concluded that certain questions of law required more extensive research. On December 7, 1978, plaintiff submitted his supplemental brief on the matter and on December 18, 1978, the defendant presented his supplemental answer brief.

Charles J., John W., and Ronald C. Lafferty are partners who owned a building at 1617-25 South Bambrey Street and the northwest corner of Morris and Bambrey Streets, Phila., Pa., where they manufactured forged steel threaded fittings of high precision standards for use in chemical plants, oil refineries, atomic plants, shipyards, and on jobs wherever high pressure and high temperature tolerances were required.

The above real estate was condemned, including all of the machines, fixtures and equipment contained therein, when the School District of Philadelphia filed a declaration of taking with the prothonotary on February 5, 1970. Upon a motion filed by the School District the Honorable Ned L. Hirsh entered a decree on May 14, 1970, appointing a three member Board of View to assess damages. The Board met and heard testimony on November 17, and 30, 1970.

On June 30, 1971, Judge Hirsh ordered that the plaintiffs vacate the premises and on September 6, 1972, the

defendants were given possession of the property with all of the machinery, fixtures and equipment in place.

The Board of View filed a final report on November 9, 1972, in which \$1,255,400 was awarded to the plaintiffs.

An appeal was taken by the School District to the Board's decision on the ground that the amount awarded was not the fair market value. The exceptions were filed on November 24, 1972.

The case then came up for trial in Common Pleas Court before the Honorable Jacob Kalish, and a jury, on June 17th through 25th, 1974. The jury returned a verdict for the plaintiffs in the amount of \$962,000.

The School District filed its motion for a new trial on July 1, 1974 and submitted additional reasons in support of its motion on August 15, 1975. On September 12, 1975, Judge Kalish dismissed the defendant's motion. A praecipe for judgment was filed on September 22, 1975, and notice was sent to the defendant.

The trial court filed its opinion on October 23, 1975. On November 16, 1976, the Commonwealth Court (D.C. 1448, of 1975) affirmed the trial court's decision and dismissed the appeal.

The School District then filed a petition for allocatur to the Supreme Court of Pennsylvania on December 14, 1976 (Allocatur Docket #2821) which was denied per curiam on June 17, 1977.

On June 27, 1977, the School District filed a petition with the Supreme Court for reconsideration of allowance of appeal. Reconsideration was denied, as stated below.

On August 22, 1977, an information was filed by the District Attorney's Office against Charles J. Lafferty, Jr. charging him with violation of 18 P.S. Section 4902 — Perjury (August Term, 1977, No. 1499).

The criminal case came up for trial on February 24, to March 6, 1978, before the Honorable Levy Anderson, and a jury, and resulted in a verdict of guilty. Immediately following the trial on March 8, 1978, the School District

filed a supplemental petition for reconsideration of allowance of appeal to the Supreme Court informing them of the outcome of the criminal proceedings.

The defendant Charles J. Lafferty, Jr., filed post trial motions seeking an arrest of judgment or in the alternative a new trial. On September 13, 1978, Judge Anderson denied the defendant's first request but did grant the motion for a new trial on the basis of extensive prosecutorial misconduct. The defendant filed an appeal, as to the trial court's denial of his motion in arrest of judgment, which is still pending. As of this time no new trial date has been assigned.

The Pennsylvania Supreme Court, on August 3, 1978, filed a per curiam order which denied the School District's petition for reconsideration.

The School District, from the time it filed its post trial motions to the verdict in the eminent domain case to the present, has argued, time and time again, that the plaintiff Charles J. Lafferty, Jr., testified falsely when he stated that certain modifications were made to two 11 inch Goss and De Leeuw machines and as such they were immovable. Each and every time, the School District's petition has been denied.

For the reasons stated below the School District's petition must once again be denied.

Since the suspect testimony in this case clearly falls within the classification of "intrinsic" fraud there is no basis for the court to grant the School District's petition on this theory.

In *D'Allesandro v. D'Allesandro*, 48 Wash. Co. 86 (Dec. 31, 1967), the Court, quoting with approval the case of *Willets vs. Willets*; 96 Pa. Super. Ct. 198 (1929), which in turn quotes the leading case of *Throckmorton v. U.S.* 98 U.S. 93 (1873), the court said:

"Where the alleged perjury relates to a question upon which there was a conflict, and it was necessary for

the court to determine the truth or falsity of the testimony, the fraud is intrinsic, and is concluded by the judgment."

In *Sallada et al v. Mock*, 277 Pa. 285, 121 A.54 (1923), the court said that judgments obtained by fraud may be corrected, but,

"Perjury, however, is not as a rule considered such fraud as warrants the vacation of a judgment, especially where the evidence was actually presented and considered in the judgment assailed: 15 R.C.L. Sec. 157, page 705; or as stated in *McEvoy v. Quaker City Cab Co.*, 267 Pa. 527, 534 'the court will not set aside a judgment because it was founded on a fraudulent instrument or perjured evidence, or for any matter which was actually presented and considered in the judgment assailed.' It would disturb the integrity of judgments and unduly prolong litigation if . . . they were to be opened because of misstatements, fraud or perjury in items of evidence, *especially when not vital to the case.*" (emphasis added)

A judgment obtained after full hearing will not be opened for "intrinsic" as distinguished from "extrinsic" fraud, and perjury is "intrinsic" in nature. *Greimer v. Brubaker*, 151 Pa. Super. 515, 30 A. 2d 621, *Certiorari Denied* *Royer v. Greimer* 64 S. Ct. 42, 320 U.S. 742, 88 L. Ed. 440, *rehearing denied*, 64 S. Ct. 194, 320 U.S. 813, 88 L. Ed. 491, *rehearing denied*, 64 S. Ct. 434, 320 U.S. 816, 88 L. Ed. 493 (1943).

The reason for the above stated rule is that there must be an end to litigation between the parties regarding the same subject matter.

Another basis for an attack on the judgment, which was presented to this Court by the School District, concerns itself with the question of "newly discovered evidence". In order for this Court to consider such a question,

the School District would have to meet the requirements as laid out in *Hydro-Flex, Inc. v. Alter Bolt, Co., Inc.*, 223 Pa. Super. Ct. 228, 296 A.2d 874 (1972). The Court in that case said that, in order for a party to be granted a new trial based on new evidence, he must show:

- (1) the evidence is in fact new;
- (2) it could not have been obtained *at* or before the trial with the exercise of due diligence;
- (3) it is relevant and is not merely cumulative;
- (4) it is not for the purpose of impeachment; and
- (5) it must be likely to compel a different result.
(emphasis supplied)

Without analyzing each and every requirement in minute detail, it is enough to note that the evidence was in fact not new, was available prior to the trial, and would be used merely for the purpose of impeaching credibility and not for substantive purposes. Therefore, it is not likely that it would produce a different result.

In addition, the trial court, in its opinion of October 25, 1975, considered this very point and rejected it:

"The after-discovered evidence appears to be some evidence that at least some of the machines were not altered as Lafferty had testified. It is too late for this. Defendant had ample time before trial to discover this, if indeed, it was discovered. The most that can be said of this evidence is that it goes to credibility rather than the merits of this case."

If the trial court (Judge Kalish), which had all of the parties before it, and who was aware of all of the surrounding circumstances of the case, refused to re-open the matter, this court takes the position that it is precluded from overruling that decision in the absence of substantial and overwhelming new information being supplied to this Court which was not considered by the trial court and which meets the *Hydro-Flex*, *supra*, standard.

Furthermore, it now appears that in the criminal case before Judge Anderson a new trial has been granted and the case remains untried. Therefore, the petition and rule of the School District of Philadelphia to quash the writ of mandamus and strike the judgment must and is hereby DENIED.

There also appears to be no reason why mandamus should not issue and said issuance was proper and according to law.

ORDER

Therefore, this 14th day of February, 1979, the defendants: Arthur Thomas, President, Edward Oberholtzer, Vice-President, Augustus Baxter, Mrs. Lawrence Boonin, Samuel H. Rubin, Robert Sebastian, Esquire, Mrs. Mitchell Stack, George Philip Stahl, Esquire, Dr. Nicholas E. Trolie, and Dr. Michael P. Marcuse, Secretary and Treasurer, individually and as members of the School Board of Philadelphia, and as officers thereof, are hereby ordered to comply with the order of this Court within 30 days hereof, and to pay the said judgment together with interest and costs out of any unappropriated funds of such School District and, in case there are no unappropriated funds of such School District, then out of the first funds that shall be received by said School District, or be held in contempt.

BY THE COURT:

s/ Doty

J.

APPENDIX E.

**Petition and Rule to Show Cause Why Writ of Mandamus
Execution Should Not Be Quashed and Judgment
Stricken.**

The School District of Philadelphia
By: Eugene F. Brazil, Esquire
21st and The Parkway
Philadelphia, Pennsylvania 19103
(215) 299-7676
Identification No. 8302

Attorney for Petitioner

IN THE
COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY

CHARLES J. LAFFERTY, :
JOHN W. LAFFERTY, :
RONALD LAFFERTY AND :
MARY LAFFERTY :

vs.

FEBRUARY TERM, 1970

THE SCHOOL DISTRICT OF NO. 942
PHILADELPHIA :

**PETITION AND RULE TO SHOW CAUSE WHY
WRIT OF MANDAMUS EXECUTION SHOULD NOT
BE QUASHED AND JUDGMENT STRICKEN**

1. The Petitioner is The School District of Philadelphia.

2. The Respondents are Charles Lafferty, John W. Lafferty, Ronald Lafferty and Mary Lafferty.

3. A Writ of Mandamus Execution issued on October 13, 1978, under the above Court, Term and Number, directing Petitioner to pay a judgment of \$962,000. with interest and costs of (\$681.58).

4. The verdict underlying the judgment should be vacated because the judgment is based upon the perjured testimony of Charles Lafferty, a plaintiff in the proceedings. Attached is copy of opinion in criminal proceeding.

5. Respondent is not entitled to delay damages under Section 611 of the Eminent Domain Code on \$700,000 for machinery and equipment since the amount was awarded by jury for machinery and equipment and equipment is an item of special damage under the Eminent Domain Code of 1964, Section 601 A, and no delay damages are due on items of special damage.

6. Respondent is not entitled to delay under Section 611 of the Eminent Domain Code on moving costs of \$10,000 since amount was awarded by jury as moving costs, an item of special damage under the Eminent Domain Code of 1964, Section 601 A.

7. Respondent is not entitled to delay damages under Section 611 of the Eminent Domain Code for another \$500 in attorney fees or \$1500. for award for search for new place for the reason specified in Paragraph 5 hereinabove.

8. Petitioner does not have sufficient unappropriated funds for fiscal year commencing July 1, 1978, and ending June 30, 1979 to pay the judgment. Said funds are necessary to keep the school system open and to pay capital bond charges.

9. The Writ of Mandamus Execution served on the Defendants had no return date and was unsigned.

WHEREFORE, Petitioner moves to Quash the Writ of Mandamus and Vacate the Judgment of \$962,000 entered in this matter.

EUGENE F. BRAZIL

Attorney for Petitioners

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss

CHARLES A. HIGHSMITH being duly sworn according to law, deposes and says that he is the Assistant Secretary for The School District of Philadelphia and that the facts set forth in the foregoing Petition to Quash Writ of Mandamus Execution and Strike Judgment are true and correct to the best of his knowledge, information and belief.

s/ CHARLES A. HIGHSMITH

Sworn to and subscribed
before me this 7th day
of November, 1978.

BESSIE M. WHITNEY
Notary Public, Philadelphia Co.
My Commission Expires December 29, 1978

APPENDIX F.

Answer to Petition and Rule to Show Cause Why Writ of
Mandamus Execution Should Not Be Quashed and
Judgment Stricken.

Augustus R. Sigismondi
1201 Chestnut Street
Suite 200
Phila., Penna. 19107
Phone: 563-8948
Attorney I.D. 13546
Attorney for Lafferty

CHARLES J. LAFFERTY	:	COURT OF
ET AL	:	COMMON PLEAS OF
	:	PHILADELPHIA COUNTY
		FEBRUARY TERM, 1970
vs.		
SCHOOL DISTRICT OF	:	NO. 942
PHILADELPHIA	:	

ANSWER TO PETITION AND RULE TO SHOW
CAUSE WHY WRIT OF MANDAMUS EXECUTION
SHOULD NOT BE QUASHED AND JUDGMENT
STRICKEN

1-2-3. Admitted.

4. Denied. Charles J. Lafferty (Lafferty) has been granted a new trial because of the many prejudicial errors committed by the prosecution at the trial. Further, the essential element of materiality is lacking in the so called false utterances by Lafferty. A Motion in Arrest of Judgment is presently pending before the Superior Court of Pennsylvania, on that, and other legal questions.

Moreover, this judgment in eminent domain has been appealed by the School District of Philadelphia (School District), through the Court of Common Pleas, the Commonwealth Court (C.D. 1448 of 1975), and the Supreme Court of Pennsylvania (Allocatur 2821). The arguments of after-discovered evidence and perjury were presented in all of the above forums, and the judgment was affirmed each time.

The School District filed a Petition, then a Supplemental Petition to Reconsider the denial of the allocatur, in the Supreme Court, and attached a copy of the docket entries of the perjury trial showing a guilty verdict by the jury. Lafferty also filed pleadings in the Supreme Court in the nature of a Petition for Leave to Answer the School District's Petition for Allocatur,** and at that time, Lafferty also notified the Supreme Court of the guilty verdict, and that post-trial motions would be filed. After being given the above information, the Supreme Court, on August 3, 1978, again refused Allocatur.

On September 13, 1978, by opinion of Anderson, J. Lafferty was granted a new trial in the perjury matter.

The Court is requested to take judicial notice of the fact that the School District prevailed on the District Attorney to bring the criminal action against Lafferty, on June 23, 1977, six days after the Supreme Court refused Allocatur upon which the judgment became final.

In addition to using criminal process, obviously to prevent the payment of, or to obtain a substantial reduction of a legitimate and final judgment arising out of the most awesome power of eminent domain, the School District is now attempting to collaterally attack the judgment by repeating the frivolous and unsustainable charge of perjury where none exists, inasmuch as a new trial has already been granted.

**Filed March 13, 1978, and attached hereto to give factual background for the case, and the law of materiality in perjury.

5. Denied. All of the machines, fixtures and equipment formed an Assembled Economic Unit with the real estate, and are compensable as part of the real estate, not as an item of special damage, as alleged. Compensation for delay in payment is applicable thereon from the date of possession, September 6, 1972.

6-7. Denied. The averments of paragraph 5 hereof are incorporated herein as if specifically set forth. Further, these items are part of a valid and final judgment, which always carries interest from the date of the entry thereof.

8. Denied. The verdict of the eminent domain jury was entered on June 25, 1974. Judgment was taken on September 22, 1975. From that date to the present, the School District has had three (3) years to include the sum of the judgment, and compensation for delay, and/or interest, and costs, in its budget of capital expenditures. Furthermore, on November 9, 1972, the Board of Viewers awarded the condemnees the sum of \$1,255,400.00, with compensation for delay in payment. The School District should have budgeted that sum from 1972-1973.

It is denied that the School District does not have sufficient unappropriated funds to pay the judgment, or that it has no funds to pay the judgment; or that all of its funds are required to keep the school system open and to pay capital charges, as alleged. Funds for capital charges such as for the acquisition of property are available from the City of Philadelphia, Commonwealth of Pennsylvania, and from a consortium of banks in Philadelphia and elsewhere, which moneys are constantly flowing into the treasury of the School District and are unappropriated and available for this purpose.

When, on February 5, 1970, the School District condemned the land, buildings, plant, machines, fixtures, equipment, tools and entire manufacturing plant of Lafferty, it exappropriated the life's blood of four families and three generations of industrious people. It should not now be allowed to avoid, or delay further, the time of payment.

9. Denied. The Writ of Mandamus Execution was properly issued by the Prothonotary of the Court of Common Pleas of Philadelphia, and signed by a deputy Prothonotary, N. DiAchillo. The Writ requires no Rule or return day, and is issued as a matter of course where the judgment is final.

WHEREFORE, Lafferty requests the Court to dismiss the School District's petition, and requests relief as follows:

1. That the School Board and Treasurer of the School District be ordered to pay the judgment with compensation for delay in payment, and/or interest, with costs, within twenty (20) days.

2. In default of payment, that each and every member of the School Board and the Treasurer of the School District be attached and held in contempt of Court, pursuant to the prayer of Lafferty's Petition for Attachment, filed on October 31, 1978.

3. That the Sheriff of Philadelphia be ordered to collect the judgment with compensation for delay and/or interest and costs, by appropriating each and every sum of money coming into the School District's Treasury, until paid in full.

4. Such other relief as may be appropriate.
And they will every pray.

AUGUSTUS R. SIGISMONDI
Attorney for Lafferty

CITY OF PHILADELPHIA
COMMONWEALTH OF PENNSYLVANIA } ss

RONALD LAFFERTY, of Bethel and Keystone Roads, Chester, Pennsylvania, being duly sworn according to law, deposes and says that he is one of the condemnees in the foregoing matter, and is authorized to make this affidavit in behalf of all others, and that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.

RONALD C. LAFFERTY

Sworn to and Subscribed
Before me this 20th day
Of November A.D. 1978.
SUSAN B. BUSH

SUSAN B. BUSH, NOTARY PUBLIC
PHILADELPHIA, PHILADELPHIA COUNTY
MY COMMISSION EXPIRES OCT. 4, 1982

APPENDIX G.

Order and Opinion of the Court of Common Pleas of Philadelphia County Dismissing Motion of the School District of Philadelphia for New Trial.

**COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
TRIAL DIVISION**

CHARLES LAFFERTY, et al : FEBRUARY TERM, 1970

vs. :

**THE SCHOOL DISTRICT OF : NO. 942
PHILADELPHIA :**

ORDER

AND NOW, to wit, this 11th day of September, 1975, the motion of Defendant, The School District of Philadelphia, for a new trial is dismissed.

BY THE COURT:

s/ KALISH, J.

J.

**COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
TRIAL DIVISION**

CHARLES LAFFERTY, et al : FEBRUARY TERM, 1970

vs. :

**THE SCHOOL DISTRICT OF : NO. 942
PHILADELPHIA :**

OPINION

By: Kalish, J.—OCT 23 1975

Charles J. Lafferty, John W. Lafferty and Ronald C. Lafferty (Lafferty) owned 1617-25 South Bambrey Street (East Side) and the Northwest corner of Bambrey and Morris Streets (West Side).

On February 5, 1970 Defendant, School District of Philadelphia (School District), filed a declaration taking both the east side and west side.

On September 6, 1972, Lafferty vacated the property, both east side and west side, leaving its machinery and equipment and moved to a new plant in Delaware County, Pennsylvania, about ten miles away.

The Plaintiff's theory at trial was that the entire plant, and more particularly west side and the machinery and equipment contained therein constituted an assembled economic unit which could not be moved so as to create a comparable economic unit and that its damages should be awarded on that basis. Furthermore, Lafferty contended that he could not move into another building suitably adapted to its business within a reasonable distance; hence, the building was unique.

School District contends that the doctrine does not apply; and the jury's verdict was against the weight of the evidence.

A verdict sheet was given to the jury with special interrogatories as follows:

(1) Could all or most the machinery in the production or the west side of this business be moved to another located without substantial or significant injury and form a comparable economic unit?

The jury replied, "No".

(2) Was the building on the west side unique because of the nature of the building and was no other building

within a reasonable distance adaptable to the functioning of the business?

The jury replied, "Yes".

The verdict sheet asked the jury to record its findings and fix the amounts next to them. The jury was given the following items and placed the amounts next to them.

Real Estate	\$250,000.00
Machinery and Equipment	\$700,000.00
Search for New Place	\$ 1,500.00
Moving of Inventory	\$ 10,000.00
Counsel Fee	\$ 500.00

The plant produced fittings that were used under high pressure, high temperatures, some in connection with atomic energy plants.

The plant itself contained various types of machines, lathes and grinders, all of which were purchased originally as used machinery. They were then stripped down by Lafferty in the east building and then the base was brought to the west building and rebuilt in place. The Court's charge briefly reviewed the evidence as follows:

"You will recall his testimony how they altered the machines so that it was possible to do heavier and faster work, increase the production. You will recall how long it took to do these operations and the time spent and work hours and labor and cost involved in preparing these machines, beefing up these machines. Lafferty said he did for every single machine on the west side the same type of alteration, although you will recall that he testified that they kept the records whatsoever of the cost involved. He expressed an opinion that these machines could not be moved without significant injury, and you will recall the reasons he gave. Primarily he said that to remove these machines would mean to rebuild them at its

new location, each and every machine. You will recall, and I don't want to go through all the details, but there was testimony concerning what they did on the inside of the machines.

Mr. Domenick Bianco, who is a millwright, whose job it was to lay out, place and align the machines. You will recall that he expressed an opinion that 45 to 50 percent, he said, of those machines on the west side could not be moved without significant injury. He said they would be damaged permanently, and that those machines that could be moved would not form a comparable economic unit. You will recall his reasoning, primarily to do with the rebuilding of the machines in place and that the base, he said, supports everything and that the minute the base is dislodged you have a lot of problems.

Then Mr. Canavan testified that he was an appraiser of machinery and equipment. He said he examined the machinery on April 9, 1970, and about six times again in 1970. Mr. Canavan, as with all other experts, and you remember, you saw so many of the photographs of all kinds here, the machinery that was down there and the certain explanations as given of the machinery and equipment, and the appraising of the fair market value of the machinery and equipment in place. Canavan said he considered what they could be bought for on the second-hand market and then considered what was done to them and then what he learned, he considered what was done to them which he learned, he said, from the owners of the property. You will recall he gave a fair market value in place, he said, of the machinery and equipment of \$1,400.00. In his testimony, it was extensive testimony about each machine and its tooling such as chuckers, chuck jaws, and indexing machines, and so forth, and that he concluded that these machines could not be moved, and that at least

45 to 50 percent, he said, on the west side could not be moved, and you will recall he said that all of this work was done, all of the work was done on these machines and that he arrived at a conclusion that 45 to 50 percent could not be moved.

You will recall the machines that were there were bought, remember the testimony, on a second-hand market from \$1,200.00 to \$3,000.00 and that he gave it a value in place, fair market value in place of these machines on the west side ranging anywhere from \$14,000.00 to \$30,000.00 or \$40,000.00 depending, as he said, on the amount of work that was put into the machine and the kind of machine and the alterations that were made to the particular machine.

Now, the School District presented Mr. Samuel Solow, also an expert machinery appraiser and qualified machinist. He testified that he visited and inspected the plant in November of 1968, May of 1968, and a number of times in 1970 and 1972, and took quite a number of photographs, many of which you saw as flashed on the wall of the machinery and equipment down there. Mr. Solow expressed an opinion based on data which he secured from movers and riggers that it would cost \$39,575.00 to move the machinery and equipment to a comparable unit, those items that could not be moved because economically it was unfeasible to do it, would cost at fair market value in place, would cost about \$12,000.00, but he also gave an expressed opinion that all of the machinery and equipment, the fair market value of it in place was, he said, \$142,000.00. I have already discussed that with you as compared to the \$1,400,000.00 as set by Mr. Canavan. He expressed an opinion, that is Mr. Solow, that all or most of the machinery and equipment could be moved to another location without substantial injury to form an economic unit and he said, if you will recall, even though

he did not know that the machinery was rebuilt in any way, he said he had no knowledge of it, and he said that this would not make a difference in his opinion and that the valuation was that he gave to it and also gave an opinion that these machines were not of a high tolerance.

There was another witness by the name of Mr. Charles Young, who was a rigger and machine erector contractor and was president of the George Young Company, president for over 30 or 40 years, something like that. He testified that all the machines could be disconnected and removed and reinstalled without substantial injury. He said he saw no reason why they couldn't be moved. He said he has removed machinery like this before and he didn't think it was very delicate machinery. He further stated it would make no difference, nor was it important that the machines were modified in any way.

Then you heard the testimony of Mr. Joseph Behmer, machinist and tool maker who also taught tool machine practice. He testified that there was no problem in moving these machines."

Under proper instructions, the Court left to the jury the issue of the assembled economic unit doctrine and the uniqueness of the building.

The evidence must be viewed in the light most favorable to the verdict winner. There was ample evidence in the record to support the jury's finding on this issue and the issue of the uniqueness of the building. (See Charge—page 31 of notes of testimony).

Counsel for Defendant contends that the Court should not have permitted Plaintiff's expert and also Mr. Lafferty, who himself worked in rebuilding the machines to itemize the costs of such rebuilding. The evidence does not show that Plaintiff used these items as elements of damage but simply as a guide to determine the fair market value of the

machinery in place. An expert may state any and all facts which he considered in arriving at his opinion. Plaintiff contended that these machines were unique and unusual. It is entirely proper to consider the costs in the overall unit valuation of the machines. See, *Hoffman vs. Commonwealth*, 422 Pa. 144 (1966) and *Pulakos vs. Redevelopment Authority*, 330 Atlantic 2, 869. The jury followed the Court's instructions on how to deal with the machinery and equipment problem and rendered a single verdict for all the machinery and equipment taken. While technically the machinery and equipment, under the jury's findings, were part of the real estate and probably should have been found as such, our Courts have relaxed the unit rule in this regard. See, *Pulakos vs. Redevelopment Authority*, *supra*.

Much of School District's contention does not concern the issue of the weight of the evidence as it does the credibility of the experts, and that was left to the jury under proper instructions. Such matters as to *where* and how the experts received their information on which their opinions were based and the lack of records kept by Lafferty, all goes to the credibility of the witnesses. For example, in its brief, School District discusses the invoices supplied by Lafferty and concludes that, "This is some indication of the truthfulness and reliability of the testimony of Mr. Canavan". (Page 8 of brief). Likewise, as to whether the machines which Lafferty testified to were actually bored or not or could be moved without significant injury is for the jury. The jury may or may not believe the testimony.

The School District complains that the Court refused to allow into evidence what Lafferty paid for the property five years before. The evidence indicated that the property was one of several; that its structure had been changed by modifications; that a fire had destroyed part. Under such circumstances the Court in its discretion felt it was not "comparable".

Lafferty testified that he kept no records as to costs of repairs of the machines because he never thought he would have to prove any expenditures. Defendant's counsel sought to pursue this area and was getting into tax questions involving accounting. Plaintiff said his accountant handled these matters. At this point, the Court felt that Defendant was getting off the issue and feels it properly stopped further questioning.

The Defendant seeks a new trial on the basis of "after discovered evidence". The "after discovered evidence" appears to be some evidence that at least some of the machines were not altered as Lafferty had testified. It is too late for this. Defendant had ample time before trial to discover this, if indeed, it was discovered. The most that can be said of this evidence is that it goes to credibility, rather than the merits of the case.

BY THE COURT:
s/ KALISH, J.

J.

APPENDIX H.

Opinion and Order of the Commonwealth Court of Pennsylvania Affirming Dismissal of Motion of The School District of Philadelphia for New Trial.

CHARLES J. LAFFERTY, : IN THE
 JOHN W. LAFFERTY, : COMMONWEALTH
 RONALD C. LAFFERTY : COURT OF
 AND MARY LAFFERTY : PENNSYLVANIA
 v. :
 SCHOOL DISTRICT : No. 1448 Commonwealth
 OF PHILADELPHIA, : Docket 1975
 Appellant :

BEFORE: HONORABLE JAMES S. BOWMAN,
 President Judge
 HONORABLE JAMES C. CRUMLISH, JR., Judge
 HONORABLE ROY WILKINSON, JR., Judge
 HONORABLE GLENN E. MENCER, Judge
 HONORABLE THEODORE O. ROGERS, Judge
 HONORABLE GENEVIEVE BLATT, Judge

ARGUED: October 5, 1976

OPINION

OPINION BY JUDGE WILKINSON FILED November
 16, 1976

Appellant appeals the refusal of the Philadelphia County Court of Common Pleas to grant a new trial. We affirm.

Appellees manufactured precision forged-steel threaded fittings in two buildings on the opposite sides of the same city block.¹ Appellant filed a declaration of taking on

1. The actual manufacturing was conducted in the building on the west side of the block. The building on the east side was used for the production, service and repair of parts for appellees' machines.

February 5, 1970, and accepted possession on September 6, 1972. Appellees left all their machinery, equipment and tools in place and moved only their new materials and inventory to a new plant they built ten miles away. At trial following appellant's appeal from a board of view award, appellees contended that their former facilities, especially the building in which the actual manufacturing took place, constituted an assembled economic unit which could not be moved. Appellees also contended that the condemned building was unique. After hearing conflicting testimony, the jury answered the trial judges submission of special findings that appellees' machinery could not be moved to form a comparable economic unit elsewhere without substantial or significant injury and that the building was unique. Appellees were awarded \$962,000.00. Appellant's motion for a new trial and the denial thereof followed.

Appellant argues initially that the verdict was against the weight of the evidence. We disagree. While there were certainly conflicts in the expert testimony, especially as to whether the machinery could be moved without damage, the record shows ample evidence to support the jury's findings. As the court below noted: "Much of [the] School District's contention does not concern the issue of the weight of the evidence as it does the credibility of the experts"

Appellant alleges error in the court's submission of the uniqueness issue to the jury and in its instruction that all values are to be determined as of the date of taking, including those of personal property left as part of the alleged economic unit. However, appellant took no specific exception to either point of the charge. Its claims, therefore, cannot be heard on appeal. *Dilliaine v. Lehigh Valley Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974).

Appellant contends further that the court erred in permitting evidence as to the value of stationery left on

the premises.² Again, we cannot agree. Section 601A (b) of the Eminent Domain Code³ permits recovery of actual direct losses with reference to personal property which cannot be moved without substantially destroying or diminishing its utility in the relocated business.⁴ The record shows that stationery came within this provision.

Nor can we agree with appellant's claim that the court erroneously permitted appellees' expert to add costs of rebuilding in determining the market value of machinery within the condemned premises. An expert may consider reproduction costs in his determination of value. *Hoffman v. Commonwealth*, 422 Pa. 144, 221 A. 2d 315 (1966). The record does not show that the expert used reproduction costs in any other way. Nor does the record support the claim that appellees' expert defined market value in terms of value to the appellees.

Appellant next alleges error in the court's refusal to admit the purchase price of the condemned property. Appellant notes that such purchase occurred slightly more than five years before condemnation and cites cases in which sales more than five years before were admitted. Yet, as we have recently stated:

"It would be an oversimplification, however, to say that because we are here dealing with a five year period, which falls within the bounds of other cases where such a period has been held to be not too remote, that we can ipso facto conclude that the lower court erred when it excluded cross-examination of purchase price of the Hammaker tract. The court below is vested with broad discretion in this

2. The stationery was valued at \$7,500.

3. Act of June 22, 1964, Special Sess., P.L. 84, as amended, 26 P.S. §1-101 et seq.

4. Since the date on which possession was transferred was September 6, 1972, appellees come within this provision. See 26 P.S. §1-606A.

area. . . ." *Klick v. Department of Transportation*, 20 Pa. Commonwealth Ct. 627, 632, 342 A.2d 794, 797 (1975).

Here the court observed that the structure had been partially destroyed by fire, otherwise changed and therefore not "comparable" to its condition five years before. While another judge might have ruled otherwise, we cannot hold that this judge abused his discretion in so ruling.

Appellant further alleges error in the court's refusal to allow cross examination of appellee as to why no records were kept concerning repairs to his machines. Appellee testified that he merely followed the advice of his accountant on such matters, and the court felt that further questioning in the area was "getting off the issue." That action was also within the discretion of the trial judge.

Finally, appellant requests a new trial on the ground of after-discovered evidence, claiming that on the date of taking it had no knowledge that the machines had not been altered as appellees alleged. As the court below ruled: "It is too late for this. Defendant had ample time before trial to discover this, if indeed, it was discovered. The most that can be said of this evidence is that it goes to credibility, rather than the merits of the case."

The record shows no other grounds for appeal.

Accordingly, we will issue the following

ORDER

NOW, November 16, 1976, the order of the Philadelphia County Court of Common Pleas, dated October 23, 1975, in No. 942, February Term, denying the motion of the School District of Philadelphia for a new trial, is hereby affirmed and the appeal dismissed.

s/ ROY WILKINSON, JR.

Roy Wilkinson, Jr., Judge

CHARLES J. LAFFERTY, :
 JOHN W. LAFFERTY, :
 RONALD C. LAFFERTY :
 AND MARY LAFFERTY :
 v. :
 SCHOOL DISTRICT :
 OF PHILADELPHIA, :
 Appellant :
 IN THE
 COMMONWEALTH
 COURT OF
 PENNSYLVANIA
 No. 1448 Commonwealth
 Docket 1975

ORDER

NOW, November 16, 1976, the order of the Philadelphia County Court of Common Pleas, dated October 23, 1975, in No. 942, February Term, denying the motion of the School District of Philadelphia for a new trial, is hereby affirmed and the appeal dismissed.

s/ ROY WILKINSON, JR.
 Roy Wilkinson, Jr., Judge

APPENDIX I.

Petition for Allowance of Appeal to Supreme Court of Pennsylvania of Commonwealth Court's Affirmance of Dismissal of Motion of the School District of Philadelphia for New Trial.

IN THE SUPREME COURT OF PENNSYLVANIA

THE SCHOOL DISTRICT :
 OF PHILADELPHIA :
 vs. :
 CHARLES LAFFERTY, et al : No. 2821 ALLOCATUR

PETITION FOR ALLOWANCE OF APPEAL

Petitioner, The School District of Philadelphia through its attorney Eugene F. Brazil files a Petition For Allowance of Appeal as follows:

1. The above captioned matter involved a condemnation of property by The School District of Philadelphia. It was tried before the Honorable Jacob Kalish and a jury. The court term and number of the case in the lower court was Court of Common Pleas of Philadelphia County February Term 1970 No. 942. The opinion of the lower court refusing defendants motion for a new trial is attached hereto as Exhibit A. On appeal the Commonwealth Court affirmed the action of the lower court. The case is lodged in the records of the Commonwealth Court in Commonwealth Court Docket 1975 No. 1448.

2. The order of the Commonwealth Court read as follows:

"NOW November 16, 1976, the order of the Philadelphia County Court of Common Pleas dated October 23, 1975 in No. 942, February Term, deny-

ing the motion of the School District of Philadelphia for a new trial, is hereby affirmed and the appeal dismissed."

3. The question presented for review is as follows: Should a new trial be granted on the basis of after-discovered evidence showing the plaintiff testified falsely, where false testimony is given by one of the plaintiffs, the false testimony is the very basis of the case, the false evidence is made known to defendant for the first time at trial, the after discovered evidence that plaintiff testified falsely is from an independent third party and is mathematically precise?

4. This case involves a condemnation for public school purposes of plaintiff's machine shop. A declaration of taking was filed on February 5, 1970. The plaintiffs vacated the property on September 6, 1972 leaving all machinery and equipment, and personal property except inventory in the buildings. Plaintiff's inventory was moved to a newly constructed building in Delaware County in September, 1972. The case was tried before a judge and jury. The jury rendered a verdict as follows:

Real Estate	250,000
Machinery and Equipment	700,000
Search For a New Place	1,500
Moving Inventory	10,000
Counsel Fee	500

The plaintiff testified that he changed the machines from the original manufactured machine by replacing old fashion sleeve bearings with tapered roller bearings and increased the size of the bearings, for example, from two inches to five inches. He testified that this required enlarging the holes in the base of the machine thus weakening the base of the machine. According to plaintiff, this weakening of the base prevented moving the machine without substantial damage to the machine. Plaintiff used

an 11 inch Goss and DeLeeuw machine as the model of the alterations he allegedly made to the machines. In discussing that machine at R122a he said:

"That sleeve type spindle cannot be used for high speeds and we replace it with a taper roller bearing."

"Q. You went from two inches to five inches actually. Yes Right"

"Q. Where did you do it? Where did you change the the size of the hole?

In what area would you do it?

A. Right in the base of the machine on the westside of the street.

Q. How many of these holes did you change?

A. All five spindles."

At R131a plaintiff indicated in response to a question from Counsel as follow:

"Q. I take it to the rest of the machinery in the production department, did you do this kind of thing for each and every one of those machines?

"A. Yes, each and every one."

Mr. Bianco, a millright, testified as an expert witness for plaintiff on whether the machines could be moved without substantial damage. At R243 he discussed the effect of replacing the sleeve bearings with the roller bearings as follows:

"Q. What happens to the base of the machine?

"A. It weakens the base, because you are taking a piece of cheese and drilling through it, like a switzer cheese. It weakens it. This is why it is doubly harmful to move them. . . ."

Subsequent to the trial The School District of Philadelphia learned from dismantling of the 11 inch Goss and DeLeeuw machines that the bearing size and bearing type was not changed as testified to by plaintiff but rather the bearing size and type was the same size and type as in the original manufactured machine. Warner and Swasey Co. examined three of its machines in plaintiff's plant and indicated the spindle bearings in the machines conformed to prints of the original drawings for the machines.

Not a single machine was found wherein the bearing size and type had been changed from the original drawings. Plaintiff had testified falsely with regard to the *crucial fact* of his case.

5. The lower court and the Commonwealth Court gloss over the fraud that has been perpetrated by plaintiff. They say the School District of Philadelphia should have determined prior to trial that the bearing sizes on the machines had not been changed. The School District had no reason to check the bearing sizes of the machines prior to trial, since the plaintiff did not allege any change in bearing size prior to trial.

Assuming *arguendo* that the School District knew prior to trial that plaintiff would testify he changed the bearing size and type bearing on the machines, does that justify plaintiff's false testimony?

The essence of this matter is that plaintiff testified falsely in order to prove the machines could not be moved. This false testimony has a domino effect since it changes the opinion of his expert witness as to the movability of the machines. It also affects the testimony of his valuation expert as to the cost of rebuilding the machines, since that witness based his valuation on what plaintiff said he did to the machines. Neither of these witnesses could say from personal knowledge that the bearings were changed.

The opinions of the lower court and the Commonwealth are completely oblivious to the law of this Commonwealth regarding this situation as that law is con-

cisely set forth in *McCabe v. Pennsylvania Railroad Company*, 311 Pa. 229 (1933) at page 233:

"In the face of this admission of brazen wrongdoing by plaintiff, the trial court refused to grant a new trial. This was an abuse of discretion. It is true beyond doubt or question that plaintiff perpetrated a bold fraud upon the court and jury or upon the insurance company. It is equally true that if defendant had been in possession of this evidence at the trial, it would have been able to contradict plaintiff on matters most material to his case, with the result that the jury would have been justified in disregarding his whole testimony. 'Falsus in uno, falsus in omnibus.' The statements which he warranted as true in his application were wholly false, or he perjured himself deliberately and for profit at the trial. To deny defendant the right to a new trial under these circumstances would be a travesty upon justice. We realize it is unusual to grant a new trial on the ground of after-discovered evidence impeaching the testimony of a witness, but where, as here, that witness is the plaintiff himself, the testimony contradicted is the very basis of his case, and he admits having made the statements that contradict his testimony at the trial, a new trial should be granted so that a jury may pass upon plaintiff's credibility in the light of this evidence."

It is respectfully submitted that the issue in this case strikes at the core of the standard of truthfulness expected of a witness under oath. Will he profit by his lies or will the Court act upon the fraud perpetrated upon itself and the jury?

Your petitioner believes that an appeal should be allowed.

Respectfully submitted

Eugene F. Brazil
Attorney for The School District
of Philadelphia

APPENDIX J.

**Notice of Order of Supreme Court of Pennsylvania Denying
Petition for Allowance of Appeal.**

**SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

June 20, 1977

Eugene F. Brazil, Esq.,
2044 Chestnut Street
Phila., Pa. 19103

In re: The School District of Philadelphia, Petitioner,
v. Charles J. Lafferty, et al. No. 2821 Allocatur
Docket

Dear Mr. Brazil:

This is to advise you that the Supreme Court has entered the following Order on the Petition for Allowance of Appeal in the above-captioned matter:

"June 17, 1977

Denied

Per Curiam".

Very truly yours,
Sally Mrvos
Prothonotary

By

Laura E. Litchard
Deputy Prothonotary

LEL:mb

CC: Augustus Sigismondi, Esq.

APPENDIX K.

Petition to Supreme Court of Pennsylvania for Reconsideration of Allowance of Appeal.

IN THE
SUPREME COURT OF PENNSYLVANIA

THE SCHOOL DISTRICT OF :
PHILADELPHIA, *Petitioner* :

vs. :

CHARLES LAFFERTY, *et al.* :
Respondent: NO. 2821 ALLOCATUR

PETITION FOR RECONSIDERATION OF
ALLOWANCE OF APPEAL

Petitioner, The School District of Philadelphia, through its attorney, Eugene F. Brazil, files this Petition for Reconsideration of Allowance of Appeal as follows:

1. The Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal in this matter on June 17, 1977.

2. On December 2, 1976, the Board of Education of the School District of Philadelphia, through its president, Arthur W. Thomas, wrote to the District Attorney of Philadelphia asking him to determine whether criminal perjury was committed in this case. A copy of this letter is attached hereto as Exhibit "A".

3. On June 27, 1977, the District Attorney's Office informed the Legal Department of the School District that the evidence presented was sufficient to warrant charges of perjury against Charles Lafferty and that an arrest was imminent.

4. If the Court refuses to allow an appeal in this case and Lafferty is convicted of perjury, the School District of Philadelphia will be required to pay in excess of \$1,000,000 on a tainted verdict. Such a result will reflect on the entire system of justice in this Commonwealth.

Respectfully submitted,

EUGENE F. BRAZIL
General Counsel
School District of Philadelphia
21st Street and The Parkway
Philadelphia, Pennsylvania 19103
(215) 299-7676

December 2, 1976

F. Emmett Fitzpatrick, Esq.
District Attorney
Philadelphia County
2300 Centre Square West
Philadelphia, Pa. 19102

Re: Lafferty v. The School District
of Philadelphia
Court of Common Pleas
Philadelphia County
February Term 1970 No. 942

Dear Mr. Fitzpatrick:

The above captioned case involved a condemnation by the School District of Philadelphia of property at the N.W. Corner Bambrey and Morris Streets in the City of Philadelphia. The property was owned by Charles J. Lafferty, John W. Lafferty, Ronald Lafferty and Mary Lafferty. They operated a business at this location known as the Penn Machine Company, a partnership.

The matter was tried before Honorable Jacob Kalish and a jury commencing June 17, 1974. The jury awarded plaintiff \$700,000 for the value in place of machinery.

The award was based primarily on the testimony of Charles Lafferty, Jr. that the machines were rebuilt in place in such a way that the base of the machine was weakened. Specifically, he stated that bearings in the original manufactured machine (bronze sleeve bearings) were replaced with tapered roller bearings and bearing size was increased from two inches to five inches. In order to accommodate the larger bearings, he stated the base of the machine had to be rebored creating much larger holes thereby weakening the base. The net result of this was,

EXHIBIT "A"

according to his testimony, the machines would be seriously damaged if moved.

After the trial, the School District had the Franklin Institute tear down the machines described by Mr. Lafferty to determine:

- a. Was the bearing size increased from the size in the original manufactured machine.
- b. Was the type of bearing changed from the type in the original manufactured machine.

The Franklin Institute checked the bearings in the machines and determined that the bearing sizes and type had not been changed from the original plans.

In addition, the School District had three Warner and Swasey machines checked by Warner and Swasey Company to determine whether the bearings had been changed from the original drawings. They indicated the machines had the same spindle bearings as were in the original manufactured machines.

The Board of Education has directed me to forward this information to you and to cooperate with you to determine whether criminal perjury has been committed in this case. Mr. Eugene F. Brazil is the staff person assigned to work as liason with you.

Sincerely yours,

Arthur W. Thomas

AWT:bh

EXHIBIT "A"

APPENDIX L.

Supplemental Petition for Consideration of Allowance of Appeal.

IN THE SUPREME COURT OF PENNSYLVANIA

THE SCHOOL DISTRICT :
OF PHILADELPHIA :

vs. :

CHARLES LAFFERTY, et al. : NO. 2821 ALLOCATUR

SUPPLEMENTAL PETITION FOR RECONSIDERATION OF ALLOWANCE OF APPEAL

Petitioner, The School District of Philadelphia through its attorney, Eugene F. Brazil, files a Supplemental Petition for Allowance of Appeal as follows:

1. The previous Petition for Reconsideration for Allowance of Appeal indicated that Charles Lafferty was indicted for perjury and his arrest was eminent. The attached record indicates that on March 6, 1978 Charles Lafferty was found guilty by verdict of the Jury on the charge of perjury. Under the circumstances, it would appear to be appropriate to remand this matter to the Trial Court directing that a new trial be granted.

Respectfully submitted,

Eugene F. Brazil
Attorney for The School District
of Philadelphia

APPENDIX M.

**Order of Supreme Court of Pennsylvania Denying Petition
for Reconsideration of Denial of Allowance of Appeal.**

**SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

August 4, 1978

Eugene F. Brazil, Esquire
2044 Chestnut Street
Philadelphia, PA 19103

In re: The School District of Philadelphia, Petitioner v.
Charles J. Lafferty et al. No. 2821 Allocatur Docket

Dear Mr. Brazil:

Please be advised that the Court has entered the following Order on the Petition for Reconsideration of Denial of Petition for Allowance of Appeal in the above captioned matter:

"August 3, 1978

Denied

Per Curiam"

Very truly yours,
Sally Mrvos
Prothonotary

By

Catherine E. Lyden
Deputy Prothonotary

CEL:mb

CC: Augustus Sigismondi, Esq.

APPENDIX N.

**Excerpts from Transcript of Trial of Charles Lafferty, et al
v. The School District of Philadelphia, in the Court of
Common Pleas of Philadelphia County, February
Term, 1970, No. 942, Held on June 17, 1974.**

* * *

parts. If we can buy cheaper, we buy it, if it is available.

Q. What is the purpose of rebuilding the machine?

A. To have it the way we want it.

Q. What do you mean by that?

A. As an example, we have a competitor that went to Germany and bought a machine for \$350,000.00 to make a two inch pipe fitting in one minute a piece.

We bought two eleven inch Gosses off him, he got rid of them, they were too slow, he couldn't make a pipe fitting in one minute with the machine, so they got rid of it and we bought it from them.

By beefing up the machine, by using heavier gears and shafts, heavier chucks, we are now doing two inch pipe fittings in forty-seven seconds and he went out and spent \$350,000.00 for a machine to do one of them in one minute.

Q. You talked about beefing up a machine?

A. Yes.

Q. When you say that, were you talking about weight adding, adding weight to the machine?

A. In some instances, yes, we do, but in most cases, we take weight away from the machine.

Q. What do you add?

A. Well, we add oversized bearings primarily. A lot of these old machines have a sleeve type bearing and we put in ball bearings or taper rolling bearings to speed them up, to make them go faster, use stronger type metal, push a heavier steel it. We beef them up generally all over so that they will do heavier work faster.

Q. What is the purpose of building the machine in place on top of the base on the westside of the street?

A. Because we know what we have. We are building a machine that we intend to leave there, to give us years and years of trouble-free service, with minimum amount of maintenance, minor adjustments and whatnot. We build them as heavy as possible to run without giving us trouble.

Q. Did you have in mind when you built them the fact that someday they have to be moved?

A. No, we didn't. That's the furthestest thing from our mind. We thought we would be there for the rest of our lives and built these machines there to give us the production that we needed.

We had a very good business there and intended to stay there and continue manufacturing our product.

Q. What, if anything, would happen to these machines if

* * *

Q. Now, were there other machines on the eastside in similar circumstances?

A. Yes, there were.

Q. How many would you say you had in that condition?

A. Maybe half a dozen, I would say.

Q. We saw some motors in actual machine shops on

the westside lying on the floor near or underneath a bench. What were they doing there? What were they being used for?

A. Spare parts, two phase motors. Two phase power is not readily available all over the City and a two phase motor is a rarity, and occasionally if I go to a sale or something or in a machinery dealer's place around Philadelphia, I always look for a two phase motor so I can have a spare, just in case I do have a breakdown, I am not tied up for any length of time.

Q. What kind of motor did the Pottstown have?

A. All three phase motors.

Q. What were you about to do with it with reference to the electrical power?

A. Rewind the motor to accommodate two phase power.

Q. Is that part of the rebuilding operation?

A. Yes, it is.

Q. Now, I would like to go into the question of rebuilding a machine.

Can you pick a machine for us and tell us exactly what it cost to rebuild, to the best of your recollection?

A. Well, take one of them, the eleven inch Goss and DeLeeuw, that is a five spindle chucking machine where we machine our forgings.

We do up to four inch pipe size and elbows, tees, cross, 45° elbow, that sort of thing. Forging is the shape of the fitting that we do on the eleven inch Goss.

The reason I picked that one, this is one of the receipts that I could find from what we had paid for it.

Q. Tell us first—glad you brought that up,—where did you buy the machine, and how much did you pay for it?

- A. We bought the machine in Tennessee. I paid \$3,750.00 for the machine.
- Q. Where in Tennessee did you buy it?
- A. From a faucet manufacturer. I bought it through a dealer in Connecticut. It was in Mississippi where it came out of. A brass faucet manufacturer had it. By the way, that only had fifty cycle power. It didn't have sixty cycle power. That eliminated all the electric wiring in there right off.
- Q. You had to change all the electrical motoring?
- A. Yes, right off.
- Q. You purchased it from down in Mississippi from a dealer in Connecticut?
- A. Yes.
- Q. How did you find out about this machine?
- A. By making contact with this dealer in Connecticut. He kind of tries to specialize in this machine, this particular machine and we periodically called him to ask him if he had any of these machines. They are kind of hard to find and we are constantly looking, as you can see the correspondence that I brought you. We have gone as far as England to look for this type of equipment.
- Q. When you found out the machine was in Mississippi, what did you do then?
- A. We bought it sight unseen. Made a couple of phone calls down there to the fellow that had it. We decided rather than to go to the expense of a trip down there, we were too busy at the time. We decided to buy it sight unseen.
- Q. How did you get it to your plant?
- A. Well, they had a rigger loaded down at that end and a trucking company brought it. They hired Charles Young the rigger from over on 20th Street to come over and unload it for us.
- Q. What did it cost you to bring that machine in to your plant?

- A. Well, with the rigging at both ends and the freight, I would say that was an additional \$2,000.00 or thereabouts.
- Q. Into what part of the plant did that come into?
- A. The eastside of the street.
- Q. What did you do with it when you received it there?
- A. Tore it completely down, stripped it right down, took out all the wiring and the electrical motors. Tore down all of the tooling on it.
- Q. What was on it that you had stripped it completely down?
- A. Well, took off the head, the back side, stripped it down to the bare casting, the base.
- Q. What kind of men do you use in order to do that type work?
- A. Our best men. The machinists that we have, they are the same fellows to rebuild it, the same fellows that tear it down.
- Q. What do you pay these gentlemen per hour?
- A. These particular fellows run around \$9.00 an hour.
- Q. How many are assigned to do this work on the machinery, usually?
- A. We always like to put two on a machine at a time.
- Q. Can you estimate for us what it cost to tear that down to the base as you described it?
- A. Tearing it down and inspecting it, alot goes in with tearing it down. You must inspect it, check the whole thing out. As they are tearing it down, they are checking it, piece by piece, inch by inch. That can take two or three weeks, just that end of it.
- Q. What do you think it cost you for that type operation?
- A. Do you mean in dollars and cents?
- Q. Yes.

A. Can I check a couple notes here? I find it is hard to remember all this stuff. To disassemble and inspect it, there were two weeks, with two men, for a total of a hundred and sixty hours, at \$9.00 an hour, amounting to \$1,440.00. That is to disassemble, clean it and inspect it.

Q. What is done after that?

A. After that, the frame itself, if it is all right, if it is usable where it can be rebuilt to do what we want it to do, we then take it over to the westside of the street and then level it and align the base only.

We then make it as secure as possible to the floor. From there, we start to rebuild it.

Q. I am curious to know why you tear it down on the eastside and take it down to the base, and then take it over, bring it over to the westside and set it on a floor, level it, line it up where it is going to be rebuilt.

Why do you go through that particular process?

A. All the parts that we are going to make for it is going to be made on the eastside. That is why our machine shop is on the eastside. That is where we machine all the parts for these machines. That is where we store everything as far as the storage is concerned.

Q. Why do you take the base from the eastside over to the westside and then start building on the westside?

A. Well, after it is rebuilt, you don't want to move it. You build it right in place. You build it to stay there, not to be moved.

Q. Does that operation secure the fact that it will operate properly without having to be moved again?

A. Yes, that's right.

Q. Okay. Now, what is the next process down after you disassemble the machine, take it over to the other side, what happens at that time?

A. Align and then level the frame, square it up and secure it as I said. Then, if we are going to put new bearings on the particular machine, which we did, the housing which is a hub that is cast right into the casting that was originally made to accommodate a solid sleeve type spindle.

That sleeve type spindle cannot be used for high speeds and we replace it with a taper roller bearing.

Q. What size roller bearing would that be as compared with the original?

A. Two inch diameter of the original sleeve bearing. We went in to three inches on the ID, and five and a half inches on the OD on the roller bearing.

Q. You went from two inches to five inches, actually?

A. Yes, right.

Q. Where did you do it? Where did you change the size of the hole? In what area would you do it?

A. Right in the base of the machine on the westside of the street.

Q. How many of these holes did you change?

A. All five spindles.

Q. Five holes?

A. Yes, if it is a five spindle machine.

Q. What does that do to the base of the machine?

A. Weaken the casting, but strengthen the spindle that you are doing for this heavier cutting, making it a faster cutting by beefing up the bearings.

Q. But it does weaken the base?

A. Yes, it does.

Q. What do you do beside that?

A. Well, on this particular machine, we mounted a portable milling table on the back end of it, back at the indexing end, milled it out so the whole slide

moves back further, and put a heavier forging in chucker and a longer drill in the turret portion for drilling bigger fittings.

Q. Are you saying that you took more metal off the base?

A. Yes. We machined quite a bit out of the back end to allow the whole slide to move back further.

Q. What does that do to the base?

A. That also weakened it.

Q. What does it cost to do the work that you already indicated to the base of the machine? Did you do anything else to the base—let me ask you that first?

A. That is all. We bore all the hubs and machined the back out—that is the extent of the work to the base of it.

Q. Now, could you give us an idea what it cost to do that?

A. On that machine alone? Five weeks labor, for two men, total of three hundred and fifty hours at \$9.00 an hour, comes to \$3,150.000.

Q. I will be quite candid, Mr. Lafferty, and I want to ask you this question which may be a leading question, but why did you spend so much money, so much time on the base of a machine?

A. Well, we are going to manufacture a high pressure steel pipe fitting. We want it to make thousands and thousands of pieces of fitting. We want each piece to be identically correct. It is a complete repetitious operation, once it is set up and running, and it has to be duplicated, time and time again and we wanted it to be right, trouble free, so that we had to go to this expense to do it this way, to make it a good quality, salable product.

Q. Is it the base that is the most important portion of the machine?

A. Yes. That is why it is called the base—the base is what you start with.

Q. Tolerance wise, how is the base, how does the base compare to the rest of the machine? These holes you drill in it and so forth?

A. Well, the bearings are very accurate as far as spacing goes. You have opposing ends of a machine that indexes and you must have it right on center every time it indexes the cycle to line up with the other end.

Q. What is done after you take care of the base and do the base work that you already described?

A. Well, we start to assemble it. Prior to assembling it, if we need a new shaft or new gears that have to be replaced, the various shoulder bolts or what-not, we make them prior to assembling. We make a drawing and sketch and back on the eastside of the street, we start making any parts that we need. If we buy it from the manufacturer, we buy them. If the delivery is too long, we can't afford to wait two or three months for a delivery of a part from a manufacturer, in which event we make it ourselves. We make all these parts before we start assembling.

Q. Which way is it more expensive, to buy the part from the manufacturer or make it yourself?

A. It varies. In some instances, it is cheaper to buy it then to make it. Other instances, it is cheaper to make it then it is to buy it.

Q. Are all parts available to you if you want to buy them?

A. No, they are not.

Q. So that in certain instances you must manufacture them?

A. Yes, have to make it or have someone make it for you.

- Q. You manufacture and assemble the parts and put them together; is that correct?
- A. Yes.
- Q. How long a period of time does that take?
- A. In this particular instance, to make parts and reassemble the machine, to rebuild the pumps and to rewire it, mount the new motor on it, heavier motor, and put in a new drive on it—everything that I have totalled six month labor for two men, at two thousand and eighty hours, \$9.00 an hour, gross figure of \$18,720.000.
- Q. What about the parts for the machine?
- A. Any parts in this machine—this particular machine, for the material that we used to make the shaft, we used ordinary metal, lead screws, things like that, plus material and parts, used stock that we could order, I have down here \$2,000.00, and that is a conservative figure as to the metal that we needed.
- Q. What kind of materials do you use in making these parts?
- A. Various types. It depends on what part you are making.
- Q. Well, suppose you are making a bearing?
- A. If you are making a bearing, you use a high grade carbon steel so it can be hardened after it is made, but before it is ground you have it hardened.
- Q. Suppose you are making a shaft?
- A. You make it out of a high tensile steel, usually chrome moly steel.
- Q. Suppose you make a spindle?
- A. Same thing, high tensile steel.
- Q. Do you use any other kind of steel?
- A. Lot of stainless steel.
- Q. Now, in your description, we now have the machine built. You have it together, correct?
- A. Yes.

- Q. What else goes on the machine, if anything?
- A. You have to build a chuck for holding the fitting.
- Q. What is a chuck? Would you explain that?
- A. A chuck is a mechanical mechanism with two opposing sides. We use all two-jaw chucks. We have a form fitting shape of the fitting that we are to fit on and hold it true center, right and left hand chuck screw on there and when you turn it one way, both jaws move open to accommodate the fitting, turn it into the opposite direction to tighten both jaws and it clamps it dead center.
- Q. So that the chuck is a holding instrument; is that correct?
- A. Holding device, yes.
- Q. You call that a tool?
- A. Yes, that is tooling.
- Q. How many of these chucks do you have on a specific machine?
- A. Well, on this particular machine, there is—there are five chucks.
- Q. Why would you have five chucks?
- A. Because it holds five pieces at one time.
- Q. You make the exact same item on this machine all the time?
- A. No. We can change it over for various items.
- Q. When you change it over, do you need different chucks?
- A. No. We can use the same chucks. Just change the jaws to accommodate the different size fittings, the different shape fittings.
- Q. Now, are these jaws also known as tooling?
- A. Well, tooling for the machine, yes.
- Q. Is there any other kind of tooling that goes into this machine?
- A. Drills and reamers and taps, that is what you use to machine the fitting.
- Q. And these are all considered tooling?

- A. Yes.
- Q. You talked about drills. Everybody knows what a drill is—actually that cuts a hole; is that correct?
- A. Yes.
- Q. How about reamers and taps, what are they?
- A. The reamer is a tool that is tapered to three-quarters of an inch per foot, same as a pipe thread is—taper pipe reamer looks similar to a pipe tap, only there is no teeth on it, smooth and reams a hole taper and is smooth.
- Q. So that it cuts the hole?
- A. Yes.
- Q. But cuts it to a close tolerance?
- A. Yes.
- Q. What is a tap, what does it cut, the hole?
- A. Cuts thread. Does not cut the hole, but cuts pipe thread on it, according to a tolerance.
- Q. Is there any other kind of tooling that goes on this machine?
- A. No. That would be it.
- Q. Can you judge for us, with this specific machine just how many pieces of tooling you may have for it?
- A. Well, including all the chuck jaws, there can be two hundred or two hundred and fifty pieces of tooling for that particular machine, and I don't know whether you can consider changing gears for the changing of speed of anything in the machine, or changing the feed, anything like that, I don't know whether you consider that tooling. That is spare parts.
- Q. Do you do that, too?
- A. Yes, we do.
- Q. Altogether, changing the feeding speed, the tooling and the chuck jaws and these grabbing instruments, the chucks, and the other tooling, the

- taps and drills and reamers and other instruments, how many altogether might you have on that particular machine?
- A. Two hundred and fifty.
- Q. Can you give us an idea what the cost of the items would be for this specific machine?
- A. To make the tooling chucks, the setting up, the adjusting, the trial run, getting the bugs out, working two months with two men, a total of seven hundred and twenty hours at \$9.00 an hour, \$6,480.00, and that is a very conservative figure.
- Q. Does this include all taps and drills and everything else?
- A. Yes.
- Q. What is the total that this machine would cost from the beginning to the end?
- A. I have a total cost on this particular machine of \$37,540.00, that was our net cost, and like I said, it is very conservative.
- Q. I take it to the rest of the machinery in the production department, did you do this kind of thing for each and every one of those machines?
- A. Yes, each and every one.
- Q. Were there some that you didn't alter in any way?
- A. None of the production. We altered every one of them in the production department.
- Q. Did it cost more or less for these other machines?
- A. Some could have cost more, some could have cost less.
- Q. But you did exactly the same thing for each and every one?
- A. Basically the same amount of work was done to each one.
- Q. I will ask you a specific question: did you in fact take the machine apart each and every one of the machines in your production department on the eastside of the plant?

A. Yes.

Q. Did you in fact bring the base of the machine to the westside of the street and do exactly the same thing as you mentioned, going through the process that you did just describe for each and every one of those machines on the westside?

A. Yes, we did.

Q. Now, I will ask you the question once more. I am sorry to be repetitious, but the Jury must understand it.

I will ask you again: why did you rebuild these machines on the westside rather than the eastside?

A. Because we were going to manufacture our product there and we built them in place there because we had no intention—never intended to move them. We wanted to have a good solid machine to give us years of trouble free service and make a good product so that we built them right in place to manufacture our product.

Q. Now, Mr. Lafferty, do you have an opinion as to

* * *

—all new parts for these machines, or do you buy parts from manufacturers?

A. Wherever we can buy them from the manufacturer, we do. So long as they are able to be delivered, delivery is not too long, we will buy them. If the delivery will run into an extended amount of time, we would be better to manufacture our own. These parts for these machines might take as long as a year for delivery. In that instance, we will make the part rather than wait for a year.

Q. Did you have the capability in your own machine shop on the eastside of Bambrey Street to make everything for those machines except the base?

A. Everything, yes, with the exception of like a roller-bearing, a ball-bearing, we didn't make that, we

bought them. But any gears or shafts, we can make any of that.

Q. Do you keep a record on each machine as to how much money is put into it?

A. No, we didn't.

Q. How about this machine you discussed today?

A. Well, I happen to be one of the fellows that worked on that machine, and that is why from memory I can come to a pretty close to the actual cost of what it was. I worked on that myself personally and that is how I am able to substantiate the time involved. And I am saying that is a very conservative figure. That one particular machine, I did work on it.

Q. Do you have records?

A. No, we don't keep records. I never thought I would be questioned on that subject. That is why I never kept a record. I never knew this was going to happen here.

Q. Do you have any indication as to when you were first notified by the School District that they wanted to acquire your property?

A. I thought prior to last night, it was 1970, but I found a letter from you, Gene Brazil, in 1968. Last night I just found that letter.

I thought prior to that, it was all hearsay rumor, but I did find a letter last night dated 1968.

Q. Now, you purchased some machines in 1968, didn't you? The adjustable hacksaw?

A. Adjustable hacksaw?

Q. Yes, adjustable hacksaw. Did you purchase an adjustable hacksaw in 1968?

A. It is possible. I can't say for sure.

Q. Well, if it appears on your partnership tax return, it would be considered accurate, that you did?

A. Yes.

APPENDIX O.

Excerpts from Transcript of Criminal Trial of Commonwealth v. Charles J. Lafferty, in the Court of Common Pleas of Philadelphia County, August Term, 1977, No. 1499.

[529]

A. No, I truthfully couldn't tell you how many hours it was.

Q. However, this was a major event, Sir, was it not?

A. Like I explained, it was a major event in my life, but it was not the most important at the time.

Q. Sir, did you spend more than three hours with Mr. Sigismonde, preparing for this trial?

A. Yes, I would say I definitely did.

Q. More than 20 hours, Sir?

A. I could not say that it was more than 20 hours.

Q. Now, Sir, it's your testimony today that you testified as to certain information at that other trial, namely, sleeve bearings and —excuse me— sleeve bearings and taper roller bearings, that you testified falsely. Is that correct?

A. Yes, I did.

Q. Sir, as to the size of the holes and the base of the machine, you testified falsely?

A. Yes, I did.

Q. And as to boring out those hubs behind the base of the machine, you testified falsely?

[530]

A. Yes, I did.

Q. Sir, how long have you been and give me a number of years, Sir, if it's possible, how many years have you been involved in this type of work, working around heavy machinery, such as these are

components of, Commonwealth's Exhibit 18 and Commonwealth's Exhibit 19?

A. Like I said, this has been the/only thing I have ever done in my whole life.

Q. How old were you when you first started working in that line of business, Sir?

A. My father used to take me down to the shop when I was two and three years old, and it seems like I have always been there.

Q. And you are now 51 years old?

A. I will be 51 this coming Wednesday.

Q. Is it fair to say you have more than 40 years experience in this trade, this line of business?

A. I would say so, yes.

Q. You would know what a taper roller bearing is, as opposed to a sleeve bearing, wouldn't you, Sir?

A. I sure would.

Q. Sir, let's talk about these machines that were

* * *

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had taper roller bearings in them. I thought I was telling the God's honest truth.

Q. Did you know you were going to testify under oath the following day?

A. Yes, I did.

Q. Did you know you were going to testify about the 11-inch Goss and De Leeuw machines?

A. At ten o'clock that night, yes, I did know I was going to testify.

Q. Did you know you were going to testify about the spindle assemblies, the sleeve bearings and the holes in the base of the machine the night before that trial?

A. I truthfully cannot say that I knew I was going to testify about the bearings and the spindles the

night before, no, I can truthfully not (sic) say that.

Q. When did you learn that you were going to testify about the bearings and spindles, Sir?

A. Some time the morning of the day I testified.

Q. And is your testimony that that morning, when you learned you were going to testify about that part of the machine, you went to the men's room and there you worked up testimony. Is that correct?

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A. That's where I finalized the figures, Yes.

Q. This case, that had developed from 1968—

Mr. Kidd: Objection. It's going to be argumentative.

The Court: And also very repetitive. Are you objecting?

Mr. Kidd: Yes, Sir, I objected in anticipation.

The Court: Objection sustained. It's argumentative and repetitive.

By Mr. Wilbraham:

Q. Mr. Lafferty, is it fair to say that when you took the witness stand and swore on the bible to tell the truth, that you weren't certain about these two 11-inch Goss and De Leeuw machines, that you were testifying about?

A. No, at that time I believed I was fairly certain.

Q. You were fairly certain about the bearings in the machine. Is that correct?

A. I was fairly certain that there was taper roller bearings in that machine.

* * *

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what the defendant's exhibit number 21 is?

A. That's a two-inch, 3000 pound forged steel pipe tee.

Q. And defendant's exhibit 22?

A. That's a four-inch 3000 pound forged steel pipe tee.

Q. Sir, when the machine was originally manufactured, what type of fitting would it produce, at that time?

A. At the time it was originally manufactured, it was able to make either one of them pieces.

Q. If you modified the original, without beefing it up, which one would you get?

A. The two-inch pipefitting.

Q. Sir, after beefing it up and making modifications, what size pipefitting can you get off of that machine?

A. All the way up to four inches.

Q. And is that basically what you mean by beefing it up, to get this type of larger product?

A. That is exactly what I mean by beefing it up.

Q. Sir, in your conversations with Mr. Sigismonde, [564]

up to the morning of the day you testified, do you ever recall testifying with regard to—withdraw that question.

In all your conversations with Mr. Sigismonde, from the time you engaged him, up until the morning of the trial, the second day of the trial, did you ever discuss with him taper roller bearings?

A. Not to my knowledge, No, I never did.

Q. Do you recall discussing taper roller bearings with him the morning of the trial?

A. Yes, I believe I did.

Q. Were you ever present at other conversations, when other conversations occurred, with Mr. Sigismonde, possibly from your brothers, where you ever discussed taper roller bearings?

A. I can't say for sure. I can't answer that.

Q. Sir, in preparation for your testifying at this trial, on June 17th and June 18th, 1974, did you prepare extensive notes of all the changes and modifications that you made to the machine, the Cleveland machine?

A. Yes, I did.

Q. And do you recall whether or not, with regard

[565]

to those extensive modifications and changes, did you have listed taper roller bearings?

A. Not to my knowledge, no, I did not.

Q. Sir, in your preparation for your testimony before the board of view, or viewers, did you tell Mr. Sigismonde about the taper roller bearings?

A. No, I did not.

Q. Sir, did you testify about the taper roller bearings before the board of viewers?

A. No, I did not.

Q. Sir, did you testify with regard to reboring the holes, at the board of view?

A. Not to my knowledge, no, I did not.

Q. Sir, was the horsepower increased significantly? Well, was the horsepower increased on the Goss and De Leeuw 11 by 10-inch chucker, number 273?

A. Yes, it was doubled, from 10 to 20 horsepower.

Q. In these conversations around the stove during the entire year, were there other co-workers present with you?

A. Yes, there was.

Q. Were there other modifications and changes

* * *

Supreme Court, U. S.
FILED
SEP 28 1979
MICHAEL D. DAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-370

SCHOOL DISTRICT OF PHILADELPHIA, *Petitioner*

v.

CHARLES J. LAFFERTY, JOHN W. LAFFERTY,
RONALD C. LAFFERTY AND MARY LAFFERTY, *Respondents*

**BRIEF IN OPPOSITION TO THE
GRANTING OF A WRIT OF CERTIORARI**

Augustus R. Sigismondi
Attorney for Respondents

1201 Chestnut Street
Suite 200
Philadelphia, Penna. 19107
(215) 563-8948

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RONALD C. LAFFERTY AND MARY LAFFERTY, *Respondents*

BRIEF IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI

COUNTER-STATEMENT OF THE CASE

The manufacturing establishment of the respondents (Lafferty) was condemned by the School District of Philadelphia (District) on February 5, 1970, and possession together with all the machines, fixtures and equipment as an Assembled Economic Unit, given September 6, 1972.

All machines were purchased used, disassembled to the bare bases or frames, and rebuilt and altered in place in the plant to manufacture special forged steel threaded fittings (30-34).

At trial in June 1974, Charles J. Lafferty (Mr. Lafferty) testified to the cost of rebuilding and altering a single machine in the plant, a Goss and DeLeeuw. (District's Appendix N at A49-A60). He did not testify how each specific machine in the plant was altered as the

District alleges, or how the bearings and bases were altered on all (34-36, 40). Rather, he said some cost more than others (District's Appendix N at A59); they were not the normal or average machines and it took approximately one year to rebuild and alter some machines (39); the machines were all different (29); and that basically each machine was rebuilt and altered the same way, that is, from the bare base up to suit the business (District's Appendix N at A59).

Mr. Lafferty further testified that a machine is like a tree; it settles in a position over a period of years and will continue to run because the adjoining parts wear in unison. However, if moved, the bearings and other parts will cease to wear in their original positions and the machine will bind and stop operating, requiring rebuilding. (36-39).

Domenic J. Bianco, Lafferty's millwrighting expert corroborated Mr. Lafferty, and testified that machines such as Lafferty's which were operating in place for five (5) years or more, would be damaged the moment moved, or while traveling and would require rebuilding (40-43). He also said that it was "doubly harmful" and he considered it "another factor" that there was reboring (43). But the real thrust of his testimony and that of Mr. Lafferty was that dislodging these rebuilt machines, which had been wearing in place for more than five (5) years, would require rebuilding.

Years before trial, the District obtained experts, prepared evidence, and actually contested the specific issues to substantiate its theory of the case that the entire business, including the machines, could be moved and would form a comparable business elsewhere, and that the plant building was not "unique".

Lafferty asserted, and by answer to two special interrogatories the jury found that (1) all the machines, fixtures and equipment formed an Assembled Economic Unit which could not be moved to form a comparable business

without substantial damage. Further, that (2) the plant building itself incorporated unique features in its construction, size, shape, location, electrical power supply, zoning and utility, all of which were necessary in combination for the operation of this business, and there was no other similarly adaptable building within a reasonable distance. Accordingly, all the machines, even if considered movable, were compensable in place as part of the real estate.

Although it tried the very issues, after trial, the District moved for a new trial based on "after-discovered evidence" alleging that Mr. Lafferty had testified falsely with regard to changing bearings and enlarging the holes in the base of certain machines.

This so called false "after-discovered evidence" was considered and decided adversely to the District on two occasions each, in the lower court and the Commonwealth Court of Pennsylvania, and on three occasions in the Supreme Court of Pennsylvania. It now files certiorari in the United States Supreme Court on the ground that it was denied "due process" and did not have its day in court.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Is due process under the fourteenth amendment of the United States Constitution violated, where the District had notice of the issues for three years and seven months, and had possession of the machines and plant for twenty-one months prior to trial, and actually tested the issues of which it complains?

2. Is a petition for certiorari filed in September, 1979, timely, where the final judgment of the Supreme Court of Pennsylvania was entered on August 3, 1978?

3. Is the School District of Philadelphia entitled to invoke the due process clause of the privileges and immunities section of the Fourteenth Amendment of the U.S. Constitution?

4. Was the proposed constitutional question preserved for review, where raised for the first time in April, 1979 in a second petition for allowance of appeal to the Supreme Court of Pennsylvania, and never raised below?

5. Does the second finding of the jury that the plant building was "unique", independently dispose of the case and preclude review of the constitutional question raised, since even if movable, the machines were not required to be moved for lack of a comparable "unique" building?

6. Where there is no ground for the writ of certiorari, and it was sued out merely for delay, is not Lafferty entitled to special delay damages under United States Supreme Court Rule 56(4)?

REASONS FOR DENYING THE WRIT

1. The District Obtained Experts, Prepared, and Presented Evidence at the Trial on the Issues of Whether the Machines Could Be Moved, and Specifically, Whether Lafferty Was Capable of Reboring the Bases and Rebuilding the Machines in the Way Testified, and Accordingly, Due Process Was Not Denied.

At the Board of Viewers' hearing in November 1970, Mr. Lafferty testified that the machines had been purchased used, and rebuilt in place in the plant. For that reason they were not movable without substantial damage, and if moved, would not reconstitute a comparable economic unit or business (63-67). His millwrighting expert, Domenic J. Bianco corroborated this testimony (67-69). The District was represented at the Board of Viewers' hearing and a copy of the notes of testimony was available to it.

At the jury trial in June, 1974, Samuel Solow, machinery appraiser and qualified machinist, testified for the District that before and after possession was given to the District on September 6, 1972, he examined the machines in the plant on many occasions, together with additional experts, among which were two movers and riggers, three machinery and tool experts, and fourteen months before trial, with three gentlemen from the Franklin Institute of Philadelphia which is world famous for its research in design and mechanical engineering (50-51). Of the eight, only two additional experts were used at the trial, George Young, a mover and rigger, and Joseph Behmer, a machinery expert, both of whom testified at length that the machines could be moved without damage¹ (58, 60-61).

1. It is interesting to note that the representatives of the Franklin Institute were again mentioned in a letter of December 2, 1976, from the President of the District's School Board to the District Attorney of Philadelphia, but their findings and testimony were never produced. District's Appendix K at A43, A44.

By offer of proof, the main thrust of the District's defense through the testimony of Joseph Behmer, was that Lafferty did not have the machines

"... capable of reboring the bases in these machines in the way it was testified to" (59-63).

Here was proof positive that the District had knowledge before trial, and expressly obtained and prepared expert evidence to test the issue!

Some twenty months before trial, the District made inquiries of Warner and Swasey Company regarding the movability of their machines, some of which were in the plant (56-57). Mr. Solow testified that he saw a Goss and DeLeeuw machine #226 in the process of rebuilding in the plant when he made his first inspection and report (51-52) and he knew how the machines had been altered (54-55). Also, he said there were motors and equipment in the service area of the plant which were removed from machines previously altered (52-53).

Consequently, for three and one-half years from the Board of Viewers' hearing, and for some twenty-one months during which it had exclusive possession of the machines before trial, the District knew the issues and specifically prepared to meet them at trial. It was not deprived of any fact

"... of which the injured party could not have availed himself in a court of law, or of which he might have availed himself at law, but was prevented by fraud or accident, UNMIXED WITH ANY FAULT OR NEGLIGENCE IN HIMSELF OR HIS AGENTS. . ." (Emphasis added) *Marshall v. Holmes* 141 U.S. 589 (1891).

The law of *U.S. v. Throckmorton*, 98 U.S. 61 25 L. Ed. 93 (1878) and *Marshall v. Holmes* (*supra*) is founded on hundreds of years of reasoning and experience. It is based on the principle that a party must use great care in preparing a case for trial and in ascertaining all the facts. A

rule which would permit the reopening of cases would void the doctrine of *res judicata*. The rule is made to protect all litigants from dilatory and successive actions of the defeated party under the claim of fraud.

If the distinction between intrinsic and extrinsic fraud is eliminated, the very heart of the doctrine of *res judicata* is removed. Where a litigant is fraudulently prevented from presenting evidence, all must agree he has not had his day in court. However, the court should not set aside a judgment which is later claimed to be founded on perjured evidence,

"... for any matter which was actually presented and considered in the judgment assailed". (*U.S. v. Throckmorton* (*supra*))

The District cites *Griffith v. Bank of N.Y.* 147 F.2d 899 (2nd Cir. 1945), 325 U.S. 874 (1945). That case held that duress or fraud in procuring a consent judgment by a trustee under threats of tying up the estate and withholding estate funds, was sufficient to set aside the judgment. A case, where duress of an extrinsic nature prevented . . . "the coerced party from challenging before or at trial, the statements or conduct of its adversary". In *Publicker v. Shellcross et al.* 106 F.2d 949 (3rd Cir. 1939), *Cert. Den.* 308 U.S. 624 (1940), cited by the District, the court said, "We do not believe it (*Throckmorton*) applies to our circumstances. . . ."

Because *Throckmorton* represents good law, it has been cited with approval in the late cases of *Myers v. Gardner* 361 F.2d 343, 346, (9th Cir. 1966) rehearing den. June 17, 1966; *Serzysko v. Chase Manhattan Bank* 461 F.2d 699, 702 *Certs. Den.* 90 S. Ct. 218, 93 S. Ct. 173, *Reh. Den.* 93 S. Ct. 470, *Cert. Den.* 94 S. Ct. 848 (1972); *Bizzell v. Hemingway* 548 F.2d 505, 507 (4th Cir. 1977).

The logic of the law which pervades all cases is that no one can negligently sit on his rights by failing to investi-

gate and prepare for trial if the information is available, and once obtained and presented at trial, he is bound by the decision. In our case the District not only knew the issues, it specifically prepared for them through expert witnesses, and fully tested and tried the issues. It is now bound.

2. A Petition for Certiorari Is Untimely When Filed Thirteen Months After the Entry of the Final Judgment, and There Are No Subsequent Changes of a Material Nature In the Judgment.

Commencing with its motion for a new trial and its appeal to the Commonwealth Court² the District has claimed through "after-discovered evidence" that Mr. Lafferty testified falsely with regard to type and hole size of bearings in certain machines. Its first petition for allowance of appeal to the Supreme Court of Pennsylvania³ is based on the same claim of false testimony obtained through "after-discovered evidence", and was denied June 17, 1977.⁴ The entire petition for reconsideration of allowance of appeal⁵ and the supplemental petition for reconsideration⁶ are based exclusively on the ground of false testimony by Mr. Lafferty, and that he was indicted, arrested, tried, and found guilty of perjury on March 6, 1978.

On August 3, 1978, the petition for reconsideration was also denied.⁷

In short, the substantive question of whether the District was entitled to appeal, or to a new trial based on the so called false "after-discovered evidence", was de-

2. See opinions, District's Appendix G at A23, A29, and Appendix H at A30.

3. District's Appendix I at A35, A36.

4. District's Appendix J at A40.

5. District's Appendix K at A41.

6. District's Appendix L at A45.

7. District's Appendix M at A46.

cided adversely to the District in each of the three courts and became res judicata on August 3, 1978.

Section 68(1) of the Restatement of Judgments states:

"Where a question of fact essential to the judgment is actually litigated and determined by a valid and final judgment, the determination is conclusive between the parties. . ."

The essential inquiry is whether the controlling issues have been decided, in which the present parties had an opportunity to appear and assert their rights. *Notoro v. Hyers Est.* (Pa.) 239 Super Ct. 10, 361 A.2nd 766 (1976); *McCandless Township v. McCarthy* (Pa.) 7 Comm. Ct. 611, 300 A.2nd 815 (1973). Once acted upon judicially, all matters decided and those which could, or should have been litigated are barred by the doctrine of res judicata. *City of Philadelphia v. Airportels, Inc.* (Pa.) 21 Comm. Ct. 227 344 A.2nd 737 (1975).

Instead of filing certiorari in the Supreme Court of U.S., on November 15, 1978 (104 days after August 3, 1978) the District filed a petition to quash the mandamus execution and strike the judgment in the lower court⁸ alleging the self-same false or perjured "after-discovered evidence". This, in spite of the record fact that on September 13, 1978, the trial judge in the criminal matter had already granted Mr. Lafferty's motion for a new trial based on extensive prosecutorial misconduct.⁹ The new trial has not yet been held pending decision on Mr. Lafferty's appeal to the Superior Court of Pennsylvania on Motion in Arrest of Judgment.¹⁰

The petition to strike was denied on February 14, 1979.¹¹

8. District's Appendix E at A14.

9. Lafferty's Appendix 83.

10. Pa. Superior Court, October Term, 1978, No. 2503.

11. District's Appendix D at A7, A13.

The District appealed the very same question for the second time to the Commonwealth Court, which on April 16, 1979, quashed the appeal because it represented a collateral attack on a judgment which was final in light of the Supreme Court's denial of allowance of appeal.¹² Finally, in April, 1979, the District filed a second petition for allowance of appeal to the Supreme Court of Pennsylvania¹³ on the self-same question, this time alleging that Mr. Lafferty had admitted under oath in the criminal trial that he had given false testimony. This, despite the fact that the criminal trial had already been voided and a new trial granted. On June 8, 1979, the Supreme Court again denied the petition.¹⁴

It is immediately pointed out at this time that the criminal trial record will clearly show that the district attorney misled Mr. Lafferty, who thought he was being asked to verify the truth only—that the bearings on the two Goss and DeLeeuw machines over which the entire criminal trial was held, had not been changed to taper roller bearings—not that he was admitting to intentionally and corruptly telling an untruth. Mr. Lafferty said that when he testified in the civil matter in June, 1974, he believed the bearings in the machines were taper roller type; there were many discussions during the rebuilding about changing the bearings to taper roller type; while rebuilding the machines he had an accident and was incapacitated for two months; immediately after the accident he was transferred to the forge shop in another state, N.J.; apart from the discussions had during the rebuilding, he did not learn that the roller bearings were not put into the machine, until his arrest in 1977; the bearings were in fact altered from a sleeve type to "taper lock bearings", and the hole size in the bases were actually larger than he testified to at the civil trial; there was no question in his mind that the Goss and

12. District's Appendix C at A6.

13. District's Appendix B at A2.

14. District's Appendix A at A1.

DeLeeuws were actually rebuilt, and that he personally worked on them; even without taper roller bearings, the two Goss and DeLeeuws were not movable without significant damage, and that none of the rebuilt machines could be moved without significant damage.¹⁵

Functionally and quantitatively, the bearings represent less than 10% of the two Goss and DeLeeuw machines. When considered against the other twenty major pieces of machinery as to which there was no evidence whatsoever, this element wanes into an infinitesimal item of less than one (1%) per cent of the whole, particularly since there are some 2200 to 2500 parts in each machine (72-73, 76-78). The above testimony does not indicate or prove deliberate falsehood, or an admission of falsehood.

The District now attempts to file certiorari in the U.S. Supreme Court from the re-entered decision of the Supreme Court of Pennsylvania dated June 8, 1979, rather than the final decision of August 3, 1978.

The Act governing time for certiorari, provides:

"Any . . . appeal or writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review, shall be taken or applied for within ninety days after the entry of such judgment or decree". (28 U.S.C.A. 2101 (c)).

The statutory period begins to run with the entry of the final judgment of the court of appeals. After the entry of the final judgment, the period begins to run anew only when the lower court changes matters of substance or resolves a genuine ambiguity in a judgment previously entered, and not when the judgment previously entered has been re-entered or revised in an immaterial way. *Corpus Juris Secundum* Vol. 36, Sec. 204(11).

15. Lafferty's Appendix 69-82.

The test for re-entered or revised judgments which toll the time within which review must be sought, is whether any lower court in its second order, has disturbed or revised the legal rights and obligations of the parties which, by prior judgment, has been plainly and properly settled with finality. *F.T.C. v. Minneapolis Honeywell Regulator Co.* 73 S. Ct. 245, 344 U.S. 206, 97 L. Ed. 245 (1952); *F.T.C. v. Colgate-Palmolive Co. (Mass)* 85 S. Ct. 1035, 380 U.S. 374, 13 L. Ed. 2nd 904 (1965).

In our case, after August 3, 1978, there was no re-entered or revised judgment in the lower, the Commonwealth, or Supreme Courts of Pennsylvania, which disturbed or revised in any way the legal rights or obligations of the parties. Absolutely nothing changed after August 3, 1978. Plainly, the time for certiorari to the U.S. Supreme Court began to run from August 3, 1978, and the District's attempt to rearrange the rules of court and the law by self-serving, dilatory and improper use of the appellate system, should not accrue to its benefit.

3. The Due Process Clause of the Privileges and Immunities Section of the U.S. Constitution Protects Only A Natural "Person", And Not A State Or Political Subdivision thereof.

The District has invoked the due process clause of the U.S. Constitution, and claims it has been deprived of its day in court.

Section one of the Fourteenth Amendment to the U.S. Constitution provides:

"... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

The District is a creature or agency of the legislature. As such, it is a subordinate political subdivision or constitutional agency of the Commonwealth of Pennsylvania, and has only the powers granted by statute. *Chartiers Val. Joint Schools v. County Board of School Directors of Allegheny County*, 418 Pa. 520, 211 A. 2nd 487 (1965); *School District of Pittsburgh v. Allegheny County*, 347 Pa. 101, 31 A. 2nd 707 (1943).

The power of the State in the control of its own governmental agencies and political subdivisions is unrestrained by the requirement of due process of law. It can create, alter, and completely eliminate an agency or political subdivision at will. And since the requirement of due process is a restraint on the state itself, it is not available to the State, or to its agencies, or political subdivisions. *Corpus Juris Secundum-Constitutional Law*, Vol. 16A, Sec. 570, p. 588.

Further, there is a wealth of law that School Districts and political subdivisions of a state, are not "persons" within the protection of the due process clause. *Lincoln Township School District of Dallas County v. Redfield Consolidated School District*, 283 N.W. 881, 226 Iowa 298 (1939); *Cronin v. Lindberg*, 360 N.E. 2nd 360, 4 Ill. Dec. 424, 66 Ill. 2nd 47 (1977); *State ex rel List v. Douglas County (Nevada)* 524, P. 2nd 1271, 90 Nev. 272 (1974); *Penny v. Bowden (La.)* App. 199 So. 2nd 345 (1967); *Warren County Miss. v. Hester*, 54 S. 2nd 12, 219 La. 763, Cert. Den. 72 S. Ct. 167, 342 U.S. 877, 90 L.Ed. 659; *City of N.Y. v. Richardson (C.A. N.Y. 1973)*, 473 F. 2nd 923, Cert. Den. 93 S. Ct. 3012, 412 U.S. 950, 37 L.Ed. 2nd 1002.

Accordingly, since the District is a political subdivision and agency of the Commonwealth of Pennsylvania, the due process clause of the privileges and immunities section of the fourteenth amendment to the U.S. Constitution, is not applicable to, and does not accrue to the benefit of the Philadelphia School District as the alter ego of the State.

4. A Constitutional Question Not Raised In the Lower Court Before Judgment Becomes Final, Will Not Be Reviewed.

The District raised the "due process" question for the first time in its second petition for allowance of appeal, filed April, 1979.¹⁶ Never before, and certainly not before August 3, 1978, did it ever mention being denied its day in court, or due process under the U.S. Constitution.

Review by the Supreme Court of the U.S. is not available where the question is raised for the first time on appeal. Nor, is it sufficient to raise a federal question after judgment has been rendered and becomes final. *Corpus Juris Secundum* Vol. 36, Sec. 274(2); *Bloeth v. State* (N.Y.) 82 S. Ct. 661, 7 L. Ed. 2nd 780 (1962). After a state court of highest jurisdiction finally decides a case as the Supreme Court of Pennsylvania did on August 3, 1978, a federal question raised thereafter, but not considered or raised before, does not warrant review by certiorari in the U.S. Supreme Court. *Yazoo and M.V.R. Co. v. Adams* (Miss) 21 S. Ct. 240, 180 U.S. 1, 45 L. Ed. 395, rehearing den. 21 S. Ct. 729, 181 U.S. 580, 45 L. Ed. 1011 (1901).

For this reason also, review is barred.

5. Where Another Ground Is Available and Dispositive of the Case, a Constitutional Issue Will Not Be Reviewed.

Mr. Lafferty testified that the west side or plant building incorporated many special features which, individually were not unusual, but in combination, were absolutely necessary for the business and "unique", and could not be found within a reasonable distance (21-29). Frank E. Mitchell, Lafferty's real estate expert verified that the many special features required in the building by this business did indeed amount to a "unique" building (44-50).

16. District's Appendix B at A2.

Because of the conflicting testimony, a special interrogatory was submitted to the jury:¹⁷

"Was the building on the west side unique because of the nature of the building, and was no other building within a reasonable distance adaptable to the functioning of the business".

The jury replied, "Yes".

Under the law of *Singer v. Redevelopment Authority of the City of Oil City*, 437 Pa. 55, 261 A. 2nd 594 (1970), the Supreme Court of Pennsylvania said:

"Likewise when the nature of the business requires a unique building for its operation, such that no other building within a reasonable distance is adaptable to the functioning of this business, then the condemned building itself, will be considered an essential part of any meaningful economic unit in this industry. In this situation, *even though all or most of the machinery, equipment and fixtures are removable*, since no new site is available, condemnee cannot maintain his economic position by relocating. Therefore, all the machinery, equipment and fixtures which are vital to the economic unit and a permanent installation therein will be considered a part of the real estate of the condemned property under the Assembled Economic Unit Doctrine. Only thus can the condemnee receive 'just compensation'". (Emphasis added)

17. One other interrogatory was submitted to the jury as follows:

"Could all or most of the machinery in the production or west side of this business be moved to another location without substantial or significant injury and form a comparable economic unit?"

The jury replied, "No".

In his opinion granting a new trial, even the criminal trial judge recognized that since the jury's answer to the special interrogatory finding the plant building "unique" legally obligated the District to pay compensation for the machines in place, Lafferty was . . . "under no legal obligation to move the machinery, even if the machinery was in fact 'movable'."

The rule that necessity of determination is a condition to judicial consideration of a constitutional question, finds application in the rule that a constitutional question will not be passed upon where the issues in the case are such that the case can be decided on another ground, even though the constitutional issue has been properly presented. *16 Corpus Juris Secundum—Constitutional Law—Sec. 94*, page 317, *Alma Motor Co. v. Timkin-Detroit Axle Co.* 67 S. Ct. 231, 329 U.S. 129, 91 L. Ed. 128 (1946); *District of Columbia v. Little*, 70 S. Ct. 468, 339 U.S. 1, 94 L. Ed. 599 (1950); *Neese v. Southern Railway Co.* 76 S. Ct. 131, 350 U.S. 77, 100 L. Ed. 60 (1955).

So uniformly is the rule applied that in *Neese* it was applied when the record disclosed other grounds for decision, even though not properly raised before the court.

Although the District apparently claims that the machines might have been movable because the bearings and holes had not been changed in certain ones, the instant independent ground obviates the District's contentions for the reason that Lafferty was not legally required to move the machines, even if they were all movable. Accordingly, review of the constitutional question should be refused, for this additional reason.

REQUEST FOR DELAY DAMAGES

6. The Petition Was Filed Merely For Delay, And The Court Should Award Lafferty Special Damages Under Rule 56(4).

U. S. Supreme Court Rule 56(4) provides:

"Where a petition for a writ of certiorari has been filed, and there appears to be no ground for granting such a writ, the court may, in appropriate cases, adjudge the respondent reasonable damages for his delay".

The petition is groundless for the following reasons:

1. It was filed thirteen (13) months after the final decision of the Pennsylvania Supreme Court dated August 3, 1978, and is untimely.

2. The District's attempt to strike the judgment in the lower court, filed November 15, 1978 (104 days after the judgment became final), represented a collateral attack on a valid and final judgment¹² for the sole purpose of attempting to enlarge the time in which to file certiorari in the U.S. Supreme Court, after the original ninety (90) days in which to file had expired.

3. The due process clause of the U.S. Constitution protects only a natural person, and is without application to the District, which is a political subdivision or agency of the State.

4. The District raised the "due process" question for the first time, on appeal, after August 3, 1978, while double-dipping in the appellate process in a belated attempt to gain access to the U.S. Supreme Court.

5. The finding of the jury that the plant building was "unique", and the judgment thereon, has been *res judicata* since November 16, 1976, by decision of the Commonwealth Court of Pennsylvania,¹⁸ which decision was never further appealed. This alternate ground for disposing of the entire case was well known to the District, and accordingly, the instant petition for certiorari, is simply a groundless sham.

6. Financial benefit gained through delay is the real reason for the District's petition for certiorari.

18. District's Appendix H at A30, A31.

Under Section 611 of the Pennsylvania Eminent Domain Code of 1964¹⁹ Lafferty is entitled to six per cent (6%) simple interest as compensation for delay in payment. During the pendency of the instant petition, including the thirteen (13) months from August 3, 1978, to the time of filing on September 5, 1979, the prime rate of interest charged by banks in the money market, listed monthly²⁰, and the rate which the District can reasonably be expected to pay, was as follows:

DATE	AVERAGE PER CENTAGE RATE
1978 August	9.01
September	9.41
October	9.94
November	10.94
December	11.55
1979 January	11.75
February	11.75
March	11.75
April	11.75
May	11.75
June	11.65
July	11.54
August	12.00
September (Estimated)	12.75

19. Act of June 22, 1964, P.L. 84, Sec. 611, 26 Pa. C.S.A. 1-611, the pertinent portion of which provides:

"Compensation for delay in payment shall, however, be paid at the rate of six per cent per annum from the date of relinquishment of possession of the condemned property by the condemnee . . ."

The comments to the Code state:

"The condemnee is only entitled to the one 6% on his award. He is not entitled to the 6% and then interest on that 6%".

20. Lafferty's Appendix 84-85.

It is believed, and the court is requested to take judicial notice thereof, that the prime rate will continue to escalate during the next few months.

On the net balance due of \$776,500.00 (verdict of \$962,000.00 less \$188,500.00 paid September 6, 1972), Lafferty would have earned in government securities, approximately 10% or, \$84,000.00, and more if compounded, or invested in other ways. However, Lafferty is limited to simple 6% compensation for delay in payment, and will receive approximately \$54,000.00.

The District did borrow at the prime rate, or better in January, 1978²¹ and the delay in payment during the pendency of this petition, represents a direct monetary benefit to the District and a compelling reason for filing the petition.

Under the circumstances, special delay damages should be granted to Lafferty.

21. Lafferty's Appendix 86-89.

CONCLUSION

For the reasons set forth, the writ of certiorari should be denied, and Lafferty awarded special delay damages pursuant to U.S. Supreme Court Rule 56(4).

Respectfully submitted,

Augustus R. Sigismondi
Attorney for Respondents
(Lafferty)

1201 Chestnut Street
Suite 200
Phila., Penna. 19107
(215) 563-8948

- A. Excerpts from the transcript of the trial of Charles J. Lafferty et al. vs. the School District of Philadelphia, Court of Common Pleas of Philadelphia County, February Term, 1970, No. 942, Held June 17, 1974.

Lafferty-direct

[67a]

too. This is actually 1625 South Bambrey Street.

Q. When you say "service work," do you mean this is actually a machine shop?

A. Yes, right.

Q. Now, I show you P-17 and ask you what that represents.

A. This is the back section of 1625 South Bambrey Street on the eastside of the street. This is where we had done all our tool work. We made all our own chuck jaws and chucks and holders and all kind of related tooling for the manufacturing side of the street. We made parts for our machinery; little bit of everything.

Q. Mr. Lafferty, could you describe for us the building on the westside and tell us why it was suited for your purpose for manufacturing?

A. Well, the fact that it was a long rectangular shape building, had high ceilings, and had heavy reinforced concrete floors for heavy raw materials and heavy machinery. We had a rectangular shaped narrow in width and long length and we had a free flow of our material with no obstructions in the main part of the manufacturing area where we would handle the heavy bars that we used. Some of the round bars are up to five and a half inches in diameter, twenty foot long. They could weigh two

[68a]

thousand pounds apiece. We had that steel work in there for the crane for the handling of these

bars. There was no obstruction coming over the machines to get to them, to get them in and out of the machines.

Q. You talked about steel work in there. What did you mean by that?

A. Heavy steel beams for a crane to operate in there. We had chain blocks and what not for the handling of the heavy raw materials, like I said, the steel bars.

Q. These bars, you say were how long?

A. Twenty feet.

Q. And you mentioned that it was clear span. Now, what did you mean by that?

A. No columns to obstruct the flow of the long bars going through the building on a crane.

Q. Is it necessary to have clear span for your type of operation?

A. A lot easier without it. Yes, I would say it is necessary.

Q. You mentioned also that you had high ceilings?

A. Yes.

Q. What does high ceilings do for your business?

A. Accessibility to our equipment when we have to maintain it. Sometime we lift a head off to replace a gear.

[69a]

We do maintenance work in them and on them. We have to come over the top with a crane. You need headroom to lift it, to lift them off and work on them.

Q. You mentioned heavy concrete floors.

A. Yes.

Q. What kind of flooring was that?

A. Heavy reinforced concrete floors.

Q. What do you mean?

A. Six inches thick, wire and steel reinforced bars in it to support the heavy product we manufactured.

Q. Would it be a benefit to have a basement beneath?

A. It would never support the weight of the product. The steel that you would have to put in for support under one building, to have a basement, you would have to have almost—it would not be practical to have a basement, no.

Q. Is it easier to find another building that does not have a basement?

A. No, it is not. We also had two-phase power in there which is a type of electricity not readily available just any place else in the country but a very small section of South Philadelphia, and I believe there is a little section in Boston and Massachusetts that still has that

[70a]

two-phase power. There are only two areas that still have two-phase power. Every place we looked had three-phase power.

Q. How does that affect the operation, the two or three-phase power?

A. All the motors are wound up to accept two-phase power. They will not accept three-phase power. All starters and switches, all wired and built to accommodate two-phase power. They will not accept three-phase power. Everything is built for two-phase power.

Also, another thing, we had G-2 zoning there.

Mr. Brazil: I object to the witness testifying without being asked a question. There is no question on the floor right now.

Mr. Sigismondi: I will accept his objection. I asked him to describe it.

By Mr. Sigismondi:

Q. Let us go back to the two-phase electrical power. Is it easy or difficult to find another building such as you would require for your business operation, for your manufacturing operation with two-phase power.

A. Virtually impossible to find a building like we re-

[71a]

quired in that area with two-phase power.

By the Court:

Q. What is the difference between two-phase and three-phase power? Can you explain that to the Jury?

A. Three-phase power you have three wires coming in there to feed three-phase power.

On two-phase power, you have four wires. You couldn't take three of the four wires and make three-phase work. You have to have three wires coming off the transformer to work on the three-phase power.

By Mr. Sigismondi:

Q. Is it a question of electrical input?

A. Yes.

Q. So that if it is two-phase input, you need two-phase motors for it?

A. Yes.

Q. Is there anything you can do to interchange two-phase to three-phase or three to two?

A. Yes. You can do what they call phase changing—a big transformer that they use to change the current from one phase to another.

Q. If you had to use a phase changer to change all the

[72a]

phasing for all the machines, would it be easily done? Is it an easy task?

A. No, it would not be easily done. And, economically not feasible either. Not only is there something else to go wrong and to burn out and give you trouble, but the cost of it. It is par on having your motors rewound and rewired to three-phase than to buy a phase changer. It is very similar in price for what it would cost.

Q. You indicated that you had an industrial plant?

A. Yes.

Q. Do you know how this area was zoned?

A. Yes. It was zoned G-2.

Q. Can you describe what that is in G-2 zoning?

A. G-2, you can do anything in the way of industry, including rendering. I believe I am not that well versed on the zoning laws, but to my knowledge, to look for a building where you can manufacture anything—chemical plants, anything can be operated in a G-2 zoning. It is a very favorable industrial rating.

Q. You would need G-2 zoning to operate your type business?

A. Yes, we would.

Q. Is G-2 zoning readily available in the City of Philadelphia?

[73a]

A. Like I said, we turned the place inside out looking for buildings. We couldn't find anything.

Q. What, if anything, did you have underground?

A. We had a large storage tank for our cutting oil and actually we used them for storing cutting oil and also salvaging the oil from the machines. In the manufacturing of our product, we create a lot of turnings of all solid bars, the forging, and you wind up with a lot of turnings and steel chips.

We used heavy black cutting oil as a coolant and lubricant in the manufacturing of the fittings. The chips, the metal chips tended to adhere to the oil, the oil being as heavy as it was with the viscosity, heavy oil, and the oil had tendency to cling to the chippings and turnings and we would store them in these storage rooms, these reservoirs underground and they would stay underground and as they would drain off from the machines, we would drain them back and salvage alot of our cutting oil. We would get rid of the turnings and be able to use the oil again. We were able to sell the chippings and turnings.

Q. Where would they drain to, this oil?

A. Into the underground tanks.

Q. How large were they?

[74a]

A. Two hundred and fifty gallons apiece.

Q. Did you put them in there?

A. Yes. One on each side of the street. One on the eastside and one on the westside of Bambrey Street.

Q. Is it important or does it have any effect at all that this property was a corner property?

A. Well, the fact that it was a corner property, long and rectangular shaped, gave us plenty of street front, large overhead doors. This made it readily accessible with a truck or trailer to go in and out of the building almost on any part of the building. With all that street front, it was like a private street. We had all of that being on a corner like that.

Q. Was it an advantage to the business.

A. We loaded the trucks outside on the street with our forklift trucks. We had it like a private street there.

Q. What about location, what was the value of your location?

A. Yes. Geographically, it was ideal because we do an awful large—a large segment of our business was pick-up business. The jobbers in the Delaware Valley area would come to our plant to pick-up their merchandise, their product. Being located close to the Expressway, the Schuylkill Expressway, close to the Walt Whitman

[75a]

Bridge, we were in a very good location. The people from out of town were able to get to us by these highways. We were also very close to the Airport. We were close to Center City. In fact, one of our best customers was located right across the street, Morris Street. Buckbalter was right across the street on Morris Street.

Q. Is that a large red brick building on the opposite side?

A. Yes. That is one of our best customers.

Q. Does it make any difference whether you are right across the street or ten miles away?

A. Sure it does.

Q. What difference does it make?

A. The convenience of it being right there. They have a phone call to sell something and they work off of our inventory. They had unlimited access of inventory by being right across the street from us. They had the advantage on the other competitors in the field by having this information of inventory virtually in their own building.

Q. What about transportation, did that make any difference?

A. Well, no transportation involved. Being located that close to the customer.

[76a]

Q. Now, I would ask you a question: is it necessary to have all of these elements that you described in order to conduct your business?

A. Yes, it is. It is necessary to have all these elements.

Q. Did you look for another place that had all these elements?

A. We continually looked, looked for approximately three years. We had just about every major real estate broker that dealt primarily with industrial real estate. Industrial realtors, we had them looking for us, all of them.

Q. Name just a few.

A. Binswanger; Strauss Greenberg; Albert M. Greenfield; Mitchell's. We had all of them looking for us.

Q. Did any of them find you a building suitable for your type operation?

A. Nobody found us a building.

Q. What did you do?

A. We bought ground out of the City of Philadelphia and built a place like we wanted.

Q. If you had to characterize all these elements in a building, what would you say they consisted of?

A. I would say they consisted of a very unique operation,

[77a]

very unique building.

Q. Inasmuch as the Jury was down there to View the building today and I hadn't planned on going into this at this time—since it is fresh in everybody's mind today—would you characterize what that building was like as compared with what it was like February the 5th, 1970, when the property was condemned?

A. I don't know if I can find the words. It is chaotic what I saw today. It made me sick to my stomach. It was completely destroyed. Not only destroyed because of the fire, but just the way the place was vandalized, the things that are missing, everything thrown around, just made me sick.

Q. What about the roof, did you examine the roof?

A. I saw how a hole had been chopped in it. All the skylights were broke and boarded up.

Q. How about the doors and windows to the place?

A. The doors of all the buildings have been repaired where they were broken into. The windows were all broke as you saw today.

Q. Can you tell us or characterize for us the condition of the buildings as of the date of taking; were they fair, poor, good or excellent?

A. They were perfect for what we were using them for.

[81a]

toward the end of the building where the fire was, I could see the discoloration.

Q. In describing these machines that you had, as of the date of taking, can you tell us what type of machines they were, can you give us a name for the machines?

A. Yes. Various types of machines. Automatic bar machines, both single spindle and multiple spindle; chuckers, turret lathes, grinders.

Q. These machines were all two-phase; is that correct?

A. Yes, they were.

Q. Now, could you describe to us how these machines got to the manufacturing side, or the westside of the street where these machines were producing a product?

A. Well, we bought them. We bought them from all over the eastern section of the country. Some of them we bought out in Detroit and Cleveland. Some machines were from different areas in the country.

Q. Were they new?

A. All second-hand machines when we bought them.

Q. Describe to us a trip to go buy a machine? What did you do, what did you look for and how do you buy it?

A. Well, first you look in the trade journals and newspapers or auction sheets for whatever you need and keep an eye out for the particular type machine and when it

[82a]

becomes available you go out and inspect it. You go over it thoroughly and make sure you can rebuild it to do whatever you want it to do.

Q. What do you look at when you look at the machine when you go out to buy it?

A. Mostly the soundness of the base of the main casing that the machine itself is built around to make sure that is not cracked. That is primarily what we look for the soundness, the base where we can go to rebuild it from the base up. We look for the integrity and soundness of it.

Q. Suppose the machine has been rebuilt once, would you buy it?

A. It depends on who rebuilt it. Who rebuilt it, how it was rebuilt. We have rebuilt machines. We rebuild them again ourselves.

Q. What happens when you buy them, the machines. What do you do with it the first thing?

A. First thing is to bring it into our plant. We bring it to the eastside of the street and then strip it down. Strip it right down to the base.

Q. Do you take all of the working mechanism off?

A. Everything, right down to nothing.

Q. What kind of people do this kind of work?

[84a]

A. You continually inspect the base. This is nothing but a big casting. It has got a hub cast in it and where there are bearings, bushings, things like that, you have to examine it.

Let me see if I can best explain it. When you are inspecting, what you are removing, if you take a shaft out with a gear, you inspect the teeth of the gear to make sure they are not chewed up. If there is a clutch in there, you inspect the clutch.

There are alot of these spindles that have thrust bearings and you inspect the thrust bearings to make sure they are intact.

Of course, when you are rebuilding the machine, you do not want to put something defective into the machine because then you have to tear it down and the machine will not produce for you.

It is important that the machine is sturdy.

Q. Before you inspect them, what has to be done?

A. You have to clean it. We steam-clean the whole thing first, then take each part, we wash them in solvent.

Q. After you have taken the machine completely apart, you are then down to the bare base. What happens then?

A. Well, then, if everything is all right, we take it

[85a]

over to the westside of the street.

Q. What do you take over?

A. The base of the machine. If we are going to use it for manufacturing, we then take it over there and set it up. We level it and get it as level as we possibly can.

Q. What do you do to level it?

A. We use shims on various places to make sure it is solid as possible, make it as solid as can be so that there is no possible change of movement or anything, because once it is set in place, we want it to run true.

We start from there and get it completely level before we rebuild it.

Q. When you rebuild the machine, where do you rebuild it?

A. Westside of the street is where we assemble it. On the eastside of the street is where we make all our parts for the machine.

Some of these machines are quite old and alot of manufacturers are out of business so that you can't buy replacement parts. You have to make them.

Q. So that you make your own parts for the machines?

A. Just about everything. Some of them we buy. If I can buy it, we buy it. If we can make it cheaper than buying it, we make it. We make ninety percent of our own

[86a]

parts. If we can buy cheaper, we buy it, if it is available.

Q. What is the purpose of rebuilding the machine?

A. To have it the way we want it.

Q. What do you mean by that?

A. As an example, we have a competitor that went to Germany and bought a machine for \$350,000.00 to make a two inch pipe fitting in one minute a piece.

We bought two eleven inch Gosses off him, he got rid of them, they were too slow, he couldn't make a pipe fitting in one minute with the machine, so they got rid of it and we bought it from them.

By beefing up the machine, by using heavier gears and shafts, heavier chuckers, we are now doing two inch pipe fittings in forty-seven seconds and he went out and spent \$350,000.00 for a machine to do one of them in one minute.

Q. You talked about beefing up a machine?

A. Yes.

Q. When you say that, were you talking about weight adding, adding weight to the machine?

A. In some instances, yes, we do, but in most cases, we take weight away from the machine.

[87a]

Q. What do you add?

A. Well, we add oversized bearings primarily. Alot of these old machines have a sleeve type bearing and we put in ball bearings or taper rolling bearings to speed them up, to make them go faster, use stronger type metal, push a heavier steel through it. We beef them up generally all over so that they will do heavier work faster.

Q. What is the purpose of building the machine in place on top of the base on the westside of the street?

A. Because we know what we have. We are building a machine that we intend to leave there, to give us years and years of trouble-free service, with mini-

mal amount of maintenance, minor adjustments and whatnot. We build them as heavy as possible to run without giving us trouble.

Q. Did you have in mind when you built them the fact that someday they have to be moved?

A. No, we didn't. That's the furthestest thing from our mind. We thought we would be there for the rest of our lives and built these machines there to give us the production that we needed.

We had a very good business there and intended to stay there and continue manufacturing our product.

Q. What, if anything, would happen to these machines if

[110a]

by the time it makes one complete revolution, one fitting is made every time it is indexed to a different spindle station.

There is a complete fitting that comes off as it goes through the complete cycle.

Q. You mean each spindle performs a different operation on that particular part?

A. Yes, that's right.

Q. Now, do you ever buy a machine with one or two spindles and then alter it to have more than one or two spindles?

A. No.

Q. How do you alter a machine?

A. Well, what we do is buy a machine and completely rebuild it. These machines may not have been built originally to manufacture a pipe fitting. They may have made faucets or something of that nature. Some other part unrelated to pipe fittings may have been the end product.

We adapt them to manufacture our product.

Q. When you rebuild the machine, you don't necessarily rebuild the machine to manufacture the same thing as it manufactured in the beginning, its original functions; is that correct?

[111a]

A. That's right.

Q. How many of these machines that you rebuilt are actually altered to manufacture your product as against another product that was manufactured before?

A. Everyone we bought.

Q. Is that what you meant by "beefing up" and altering?

A. Yes, that's correct?

Q. Now, in your operation, do you need all of the machines that are in the manufacturing plant in order to produce the product that you require in your business?

A. Yes, we do.

Q. Are these machines all interdependent one with the other?

A. Yes, they are.

Q. Why is that?

A. It gives us a complete line of fittings that we manufacture. If we just made one size fitting, it would be an unsalable item because there is competitors in this business.

The more products you have, the easier it is to sell. Our competitors all make a complete line of fittings. If we just made one size fitting or a couple sizes, they wouldn't buy off of us. They would go buy where they can buy a complete package, anywhere from one-

[125a]

Q. Tolerance wise, how is the base, how does the base compare to the rest of the machine? These holes you drill in it and so forth?

A. Well, the bearings are very accurate as far as spacing goes. You have opposing ends of a machine that indexes and you must have it right on center every time it indexes the cycle to line up with the other end.

Q. What is done after you take care of the base and do the base work that you already described?

A. Well, we start to assemble it. Prior to assembling it, if we need a new shaft or new gears that have to be replaced, the various shoulder bolts or what-not, we make them prior to assembling. We make a drawing and sketch and back on the eastside of the street, we start making any parts that we need. If we buy it from the manufacturer, we buy them. If the delivery is too long, we can't afford to wait two or three months for a delivery of a part from a manufacturer, in which event we make it ourselves. We make all these parts before we start assembling.

Q. Which way is it more expensive, to buy the part from the manufacturer or make it yourself?

A. It varies. In some instances, it is cheaper to buy

[134a]

machine, couldn't you just replace that part?

A. Yes, if you can find it. How do you find what is damaged?

Q. Well, I don't know. I am asking you the question.

A. You have to tear it down and find out where the problem really was.

Q. What happens to a machine when it is operating in a specific spot for a number of years?

A. It is like growing a tree—a tree settles down in its natural place. It gets into the groove, like.

Q. Does it operate in one way?

A. Yes. It operates in the same repetitious way. It settles down.

Q. Well, with relation to wear on the various parts, do all parts wear in the same way at all times?

A. No, they don't.

Q. What happens to them when you operate the machine in place for many years?

A. They wear gradually—the bearings will become loose, but there is an adjustment. We make all these items to be adjustable with normal lubrication and they can give you years and years of trouble free service if they are maintained properly and adjusted correctly.

Q. Let us take a bearing sleeve. Will that sleeve bear-

[135a]

ing wear identically from the one end to the other end?

A. No, not in most cases. It will not.

Q. How will it wear?

A. It usually wears on the bottom. Naturally, if you have a sleeve bearing, a shaft running through it, the weight of the shaft will make it wear on the bottom.

Q. It will get out of shape—but it will continue to run, wouldn't it?

A. Yes, it will.

Q. If you pick up and move the machine, what happens to the sleeve bearing?

A. You can distort it from one end to the other—put a twist in the machine, burn the opposite bearing up.

Q. If you pick it up and move it, will that bearing wear in the same way as it was wearing before in its original place?

A. In most cases, it wouldn't.

Q. What effect will it have on the machine, if any?

A. If the machine is in line before it was moved and you move it, and then set it down and put a twist in that particular bearing that you are speaking of, it would throw the spindle off from line, from the operation line that you are doing from the other end.

Q. What would happen to the machine?

[136a]

A. The machine could crack—it could break.

Q. Could it stop?

A. It could stop; positively could stop.

Q. If you had to change that bearing, assume that the bearing is within the center of the machine somewhere, if you change the bearing, what would you do to the machine?

A. Tear the head off, go inside and tear down the machine and replace it.

Q. When you tear the head off, take the parts off, what do you have to do with those parts, if anything?

A. In most cases, something is worn like that on the bearing, everything in relation to it also wears and you have to replace it, too.

Q. In other words, is it possible to replace one part new and not replace the balance of it?

A. Not in most instances, no. If you do it, do it all at once, because you will be continually going back replacing items one at a time.

Q. Had you had experience before with this kind of thing before, when you moved a machine after you rebuilt it?

A. We always bought second-hand machinery. We always had trouble with it, even a simple engine lathe or drill press, from moving it from one place to another, we always

Lafferty-cross

[164a]

Q. Now, when you bought this building in 1964, did you move any machines from the eastside to the westside?

A. Yes, some of them, yes.

Q. Which ones?

A. Some of the turret lathes. Some of the Gosses.

Q. Did you rip them down before you moved them?

A. In most instances, yes.

Q. You built all new parts for them?

A. In most instances, yes.

Q. How long did it take you to set up that building on the westside of Bambrey Street?

A. To get it like it was when we left it? From the time we bought it?

Q. After you bought it, in December of 1964, now, you started setting up production on the westside of Bambrey Street.

How long did it take you?

A. We originally started out with two eleven inch Goss that we bought specifically for this building. It didn't come from across the street. We brought them in, two particular eleven inch Gosses, placed them in there, had them for over a year before they were running.

Q. How long did it take you to get set up in production in there—you have more than two machines—how long

[201a]

better word—would you take the whole engine out to find out why the motor would not run? Why would you have to do that?

A. Like I said, we are making a high class product, a repetitious type product from a particular machine. When we are building the machine in place we want it to give us years of trouble-free service. We don't want to be doing it everyday, going in it and not getting any production out of the machine. We build it for high production and high quality.

Q. The example of the base with all new parts on it—in other words, if you were to move that machine, and you would have something that went wrong with that machine, you say you would have to strip it down to the base again to get it functioning?

A. We would do as I told you before, go through it by a process of elimination, as I said to you.

Q. Would you use the parts from it?

A. If they weren't defective, yes, we would. If they were bent in the move or chipped or tooth knocked off from a gear, we wouldn't use that part, no. If there is nothing damaged to the particular part, yes, we would reuse it.

Q. How long would the part last for these types machines?

Bianco-direct

[237a]

ining them, to see the type of physical makeup that was involved with each machine and whether they can be moved, whether they can be damaged

if they were moved and to see the age of the machine, the way it was set up and the position of the machine and this was the main purpose that I was there.

Q. Okay. Did you arrive at a conclusion or do you have an opinion as to whether or not these machines and those machines in the manufacturing plant could be moved? Did you arrive at a conclusion?

A. Well, anything can be moved; however, the fact that these machines, the physical makeup of these machines, they have multi-spindles, there are a lot of moveable parts, there are a lot of slides on the turret ends and they have been setting in one position for a number of years.

I don't know exactly the amount, but a number of years.

By the Court:

Q. Mr. Bianco, could you give us your opinion first: can these machines be moved without substantial injury, can they or can they not be moved, and then give us the reason?

[238a]

A. I would say they should not be moved because they would possibly have serious injury.

Q. Now, tell us why? Tell us now how you have come to that conclusion.

A. Because of the physical makeup of the machines. The fact that they have been lying in one position and operating for a number of years in this one particular place I would say that all of the shafts and bearings and slides, they are all worn in a certain position.

For example, if the machine, when it was first set up was level, say level to begin with, and then

over the years it gradually went out of level, the shafts and bearings would gradually wear to that out of level position.

So that when the machine is moved, or dislodged from that position, the shaft, even though it would be realigned and leveled, it will be on a different position regardless of how careful you are in the alignment. It is not going to be in the same position it was in where it was setting for a while. That little difference can cause a binding and a bearing to burn up. This can happen right away or it can happen in a week or two weeks. It may not even happen.

The Court: Counsel.

[239a]

By Mr. Sigismondi:

Q. Is that after it is moved?

A. After it is moved, yes.

Q. You say that this injury or damage would occur upon moving it. When and at what stage of the move would it occur?

A. Well, I would say the minute you put a bar under it to move it, you have changed the actual setting of that machine. You have already changed it from its original position. It is not true level. You have no way of really knowing just what position it was really in to begin with.

Another thing, when you set it up at the other end, it can also be done while travelling on a truck, because a truck bounces quite considerably and it can be done while being moved into the other plant. It can be moved or distorted just enough to chip a little bit from the tooth of a gear and that can jam the machine or cause considerable dam-

age or a part can become weak as a result of putting too much stress on a particular side of the machine as it is lifted. The thing is, you just don't know where the damage is going to occur.

Q. Would this apply to all three types of machines, the chuckers, lathes and screw machines?

[243a]

worked on, when they say "beefing up", you are beefing up a machine such as replacing roller bearings to put in an anti-friction bearing that will outlast a sleeve bearing, outlast it maybe one hundred to one. The beefing up is in the mechanical parts, the anti-friction bearings as opposed to sleeve bearings.

Q. What happens to the base of the machine?

A. "It weakens the base, because you are taking a piece of cheese and drilling holes through it, like a switzer cheese. It weakens it. This is why it is doubly harmful to move them."

Q. What do you mean by that? What do you mean doubly harmful to move them," with reference to this statement you just made?

A. "Well, most machinery is basically a base itself or a structural frame which is the main body of the machine. Everything else is built on there. So that the main structure is what supports everything. When it was originally built, that base was engineered to be able to be moved and to take the weight. But once it has been bored out and changed from the original specification, of course it is weakened."

The Court: Do I understand you to say as long as it stays in its position, it will be all

Mitchell-direct

[515a]

8" risers is along the Bambrey Street side of the two-story section. A washroom is at the head of the stairway and contains one water closet and one washroom.

Five skylights of wire glass are in the roof on this west side of Bambrey Street, 1608-32 South Bambrey Street.

There is a mezzanine 15' x 27' for storage of light material which is over the locker room and washroom.

Erected and spaced along the west wall on the first floor of the building are three Jackson Church oil-fired hot air heating units with galvanized sheet metal ducts along the entire wall.

Adequate fluorescent lighting fixtures throughout the entire first floor.

There were three large manually operated overhead doors which are along Bambrey Street and one 10' wide 12' high overhead door which is on Morris Street.

The total building area on the west side of Bambrey Street is 20,475 square feet.

Q. Now, Mr. Mitchell, I believe you indicated in your report that a part of the first floor on the west side was clear span?

A. Yes, sir.

Q. What exactly do you mean by that?

[516a]

A. It has no columns.

Q. What part was clear span and just what was it used for?

A. I believe that was the part that was used for the production.

Q. Is that your answer, sir?

A. Yes. The one-story section was clear span, 14' under the roof, that is my recollection. That was, if I recall, the manufacturing end of the building.

Q. Now, is there any advantage for having clear span building?

A. Yes, sir. The advantage is that you can be flexible with your production line. In other words, you do not have to wrap around columns. You do not have to worry about small bays between two columns. This room is, for instance, clear span. There are no columns in it.

Q. Now, what about the ceiling height? You mentioned about that in your report. Tell us the ceiling height on the west side?

A. Well, I mentioned in part of it that it was one section 14' under the roof, just a moment ago, and it was clear span section, 14' under the roof.

Q. That would be the manufacturing section, correct?

[517a]

A. Yes.

Q. Now, is there any advantage of having a high ceiling in an industrial building?

A. Yes, sir. Depending on what your industrial building is used for, one would be if you have high machines; another would be for storage of finished or unfinished goods. If you want to stack them on pallets. Otherwise, height is also an advantage in industrial property.

Q. Now, you mentioned 6" concrete floors. Can you tell us exactly what that was. whether it was just concrete or something else?

A. You always put a great deal of weight on a concrete floor, but machinery particularly in a manu-

facturing area, heavy machinery, this six inch concrete is a definite plus factor. I heard it mentioned something about 18,000 or 20,000 pounds. There is a lot of weight to put on a floor. You must have a good heavy solid concrete floor to hold that type of machinery, without breaking up your floor. Also, of course, you need a good foundation to keep the alignment, the steadying of your machinery.

- Q. Now, I heard you read your description of the buildings. You made no mention of the basement. Was

[518a]

there a basement?

- A. There was no basement in this particular building. And I think for this type of operation, which is, I would call it a heavy machinery type operation, that it would be an advantage not to have a basement.

In other words. to build on solid ground, you would not have to support a floor from a basement.

- Q. Now, some mention was made of two-phase and three-phase power. Do you know what kind of electrical power input was distributed to this building by the Philadelphia Electric Company?

- A. This was two-phase power.

- Q. Is this power generally prevalent in the City of Philadelphia?

- A. Not generally. Although there are some other rare limited sections of the City that have this accommodation, there is still two-phase power, most of the power in Philadelphia is of a three-phase distribution.

- Q. You mentioned that this property, these properties were zoned G-2 Industrial. Are there many areas in the City of Philadelphia that are so zoned?

- A. Well, I don't know what you mean by the word "many." I would say there are quite a few areas in Philadelphia which are zoned for G-2 Industrial. I would say it cer-

[519a]

tainly is not a rare zoning by any means.

- Q. But it is a limited type of zoning? It is not the most prevalent type of zoning in Philadelphia?

- A. With the exception of what is known as lease restricted, where you can put industrial, what is called offensive zoning, whether it is offensive by means of dust or noise or odor, these would be considered offensive type zoning, G-2 is the most permissible industrial, except the lease restricted.

- Q. What do you mean "most permissible?"

- A. You can have different types, more types of industrial uses and businesses in a G-2 industrial area.

- Q. Is that actually restricted, the number of businesses that can go into the area?

- A. I don't know the number of restrictions, but they are restricted, the type to go in there. You cannot, for instance, in a G-2 industrial, put in a plant which gave off noxious odors, noise. So that to do it, this would have to go into a lease restricted area.

- Q. Let me put it this way, Mr. Mitchell. I am afraid I am not getting it across to you: would a machine shop be permitted in a commercial area?

- A. Not without a variance.

[520a]

- Q. Would a machine shop be permitted in any other industrial zoned area besides a G-2 and lease restricted industrial zoning?

A. I don't think so, although I don't recall all the requirements in G-1 Industrial. But I would suspect that an operation of this kind would have to be in a G-2 industrial area.

Q. Can we characterize that, not to put words in your mouth, can we characterize it as a restrictive type zoning?

A. It is restricted, no question about it.

Q. Did you note in your examination of the property that it had anything underground?

A. There was, I think I mentioned it, an underground storage tank that they had these drippings from the machines. To the best of my knowledge, that was the only thing underground.

Q. Now, what about the size of the buildings and the location of the buildings. How would that in your opinion qualify for a manufacturing building?

A. Well, on the east side of Bambrey Street . . .

Q. I am talking about the west side.

A. Let me talk about both of them, if you don't mind. On the east side, you are asking me about the type of

[521a]

building on the east side of Bambrey Street. You have roughly 10,000 square feet. This is roughly a popular size industrial building.

On the west side, the first floor, there is something over 15,000, counting the second floor, you have approximately 20,000 square feet.

Now, these are all popular size industrial buildings, these 10,000, 20,000 or a combination of 30,000 square feet of building.

I wish I had a dozen of them for sale.

Q. My question was directed to the size and shape, Mr. Mitchell. What shape building did we have on the west side of Bambrey Street?

A. Rectangular.

Q. Is that a desirable type of building for manufacturing purposes?

A. Certainly.

Q. Why?

A. Well, for your production, you can spread your production out on a line.

Q. Now, you mentioned all of these factors which this building had on the west side. Would you consider any of these factors such as clear span, high ceilings, rectangular shape, would you consider any of these

[522a]

factors or elements in themselves of a unique character?

A. Taken separately, no.

Q. If you took them all and put them together and all, are necessary and required for a business, would that, in your judgment, form a unique character in a industrial type building?

A. If I had all of them, yes.

Q. Do you know if this business required all of these elements in this manufacturing building?

A. Well, I would certainly think so. First floor, mostly first floor exposure, yes. Clear span, yes. High ceilings, yes. Heavy concrete floors, yes. No basement, very important. Good labor area, excellent labor area for employment. Transportation no problem. All of these things, these elements, I think are necessary for this type of operation.

Q. Now, we introduced some photographs in evidence and had them marked. The first photograph this gentleman took them and I would like to have you see them and identify them so they can be put in evidence.

The Court: You want who to see them?

Mr. Sigismondi: Unless the other side would agree, that I can put them in evidence, I wanted to further qualify them. These are the

Solow-direct

[584a]

and equipment which was attached to the real estate in the building at 1617 to 1625 South Bam-brey Street, in the building also known as 2525 Morris Street?

A. Yes.

Q. And, pursuant to that request, did you make an inspection of the building?

A. Yes, sir.

Q. Would you tell us when your first date of inspection was?

A. My first date of inspection was November 13th, of 1963, and subsequently after that, on April the 14th, of 1969, on April 24th, of 1969, on May the 5th, 1969, along with Mr. L. Seffin of the Philadelphia Machinery Company. On 11-17-70, went there with Mr. Benjamin of the Benjamin Rigging Company; on 11-30-70, in the presence of the Board of View of the City of Philadelphia; on 11-1-72, with Mr. Charles Young of the Young's Rigging Company; on April the 16th, 1973, with three gentlemen from the Franklin Institute; on 10-29-72, with Mr. Sidney Marks of the Lehigh Tool and Machine Company, and three additional visits

after the move which was on September the 6th, of 1972, with Mr. Behmer and myself.

Q. Did you also visit the plant with a school photographer from the School District of Philadelphia?

[594a]

duction plant, the west side where all the other machines that you saw together, where they made the product.

This machine you will notice here, all these tubes are disconnected. All these plates are off.

All the tooling is out. All of the parts here are removed.

Q. When did you first see this machine?

A. This machine was first seen in my original report in 1969, with a notation in that report that this particular machine was apart and not being used.

Q. Was the machine in the same condition on October 18th, of 1972?

A. Identical, sir.

Q. Going next to D-33.

A. As you notice, this is also listed as photo number 21, the same machine, showing all of the parts removed and this is a different close-up picture of the same machine.

Q. Does the photograph show just what this machine is sitting upon?

A. There is another photo indicating that, Mr. Brazil.

Q. Very well. Going next to the photo D-34.

A. D-34, corresponding with my photo number 21. We are still referring to that same Goss & DeLeeuw machine. This photo shows that this is what you will hear later,

[595a]

as to the hub, and also this portion here (indicating), this is called a hub, which you will hear about.

Q. Very well. Going next to photo D-35.

A. Showing number 21, this again is the number 21 listing, the same machine, giving you a close-up of the condition of that machine, showing you more of the top area of that same machine.

Q. Going next to D-36.

A. This is again is that same machine, under the class of photo number 21, showing you that for all the period of time that we are referring to it, it is seated on this wood block off the concrete floor, just resting there during the time, from the time I took my original appraisal until the 18th of October of 1972, same place.

Q. Is this one of the machines Mr. Canavan said is not moveable?

A. So he says.

Q. Without taking too much time of the Jury, we will go on from there.

Mr. Sigismondi: Which machine is that?

The Witness: Serial No. 226, the Goss and DeLeeuw.

By Mr. Brazil:

[605a]

for heavy sledge hammer and this is a partial press drill. You turn this drill by hand and press against it to get the pressure on it.

Q. Going to D-55.

A. Which is my photo number 88. These represent motors listed in the appraisal report. You will notice the size of the motors. The size has nothing

to do with horsepower. Years ago a ten horsepower motor could be this size, but today, a ten horsepower can be this way (indicating). This gives you an example of a ten horsepower. It was almost approximately compared to this, approximately half the size in horsepower. It also shows me it is a repercussion, induction use motor which uses brushes which are not used much anymore. You can't tell whether this is or this is not, but it is also indicated that it is a two-phase motor of vintage years and on this end of the shaft of the motor, if you will notice this portion from here to here (indicating), is an old flat belt drive pulley with the chuck taken out of it right here (indicating).

Q. Would they be used to replace motors on existing machines in the production side of the machine shop?

A. Speed and size and shape would prohibit the use of a motor of this type on any of the machines that they

[606a]

have there now.

Q. Going to D-56.

A. This is a portion of the building on the second floor of the west side which you were not able to get to because things were thrown down the staircase. This rack here represented, as you will notice, oval heads. These are collars for machines used in production on the first floor if and when they needed them.

Q. And D-57, last one.

A. That is my photo number 90. This is a closet on the second floor, and as you notice, it is pretty bare, but originally this was listed as full of merchandise and equipment.

Mr. Sigismondi: Your Honor, I object to this remark and the various remarks he keeps making.

The Court: You have not made any objection so far.

Mr. Sigismondi: I have tried to be patient. I must object.

The Court: The objection is sustained. Will the witness simply make no comments and simply limit your testimony to the facts as they depict in the photograph.

The Witness: Yes, sir. This photo number Solow-cross

[706a]

thetical question, that this machine has been rebuilt on the inside and so forth in order to produce a particular product like this.

Knowing that, do you think that if you wanted to sell that machine on the open market, the fact that the machine had been worked on from the inside and built up and so forth, to produce such a product, the kind of product that this machine was producing, would that machine bring more money on the open market?

A. No, and possibly even less.

Q. Is it your thought that the same machine, even though if it wasn't changed or beefed up could do the same operation; is that what you are saying?

A. Yes.

Q. What you are saying, the fact that they made changes on it had no effect whatever? You are saying they could still manufacture this kind of product even if they didn't do any work on the inside of it; is that what you are saying?

A. Maybe a little slower, according to the factory specifications, but it would make the same product but a little slower.

Q. So what you are saying, all that possibly could be done is to increase the rate of speed, more than anything

[707a]

else?

A. Increase on the production rate, yes. They increased the size of the driving force and the gears so that they can run it faster without the shaft breaking down when they hit it at high speed, yes.

Q. Would it enhance the value of the machine, this working up of this machine?

A. Not on the open market, no.

Q. If it could produce twice as many of these work products in one-half the space of time, don't you think it is a time saver?

A. If you sold that machine to somebody else who made fittings for water piping, he wouldn't care if it had faster speeds or not.

Q. I am not talking about that. I am talking about out on the open market, if a machine was so revamped on the inside so that it could produce this particular product at twice as fast a pace, would that enhance the value of the machine?

A. Not unless he advertised it as an altered machine, specialty item machine.

Mr. Sigismondi: If Your Honor please, I just have a few more questions before we break.

The Court: We ought to break at this time

Solow-rdr

[779a]

A. Yes, sir.

Q. Do you have anything from the Goss and DeLeeuw Company?

- A. I have a letter that I sent off to the Goss and DeLeeuw Company dated July 12, 1972 asking them to give me the values of those machines. listing them by serial number, and all I got back was a list of how old they were.

I believe they may have mentioned they are all obsolete.

- Q. Do you have any letters from the Warner-Swasey Company?

- A. I have a letter from Warner-Swasey dated November 1, 1972, asking about the machines. I also have a return letter from my inquiry concerning the Warner-Swasey machines. I have a letter from Leonard Machinery Company dated February 18, 1971, at that time the Leonard Machine Company told me what machines were available, how much they would be and listed accordingly. In other words, on the Warner-Swasey numbers, the number 5 Warner-Swasey turret lathe, listing the serial number, I received a value of \$1,500.00 plus ten percent for resale. I was told that this was a 1928 machine. I have a letter from the C. W. Wood Machinery and Tooling

[782a]

witness said he used this in helping him formulate his opinion that these machines, certain ones, could be moved. The Jury is entitled to know on what basis he has formed his opinion.

Have it marked and go from there.

By Mr. Brazil:

- Q. I refer to this letter marked D-66 from the Warner-Swasey Company.

Did you use this letter in assisting you to form your opinion whether these machines could be moved?

- A. Yes.

- Q. Would you read the letter, please.

Mr. Sigismondi: I object to reading the entire letter. There is no point to burden the entire record.

The Court: The objection is overruled.

- A. (Reading): "Dear Mr. Solow: You have requested a statement regarding the movement of our equipment from one location to another. Our equipment is manufactured so that if the machine is in good operating condition before it is moved, the machinery can normally be moved, installed, and realigned to operate in the same manner as it did before, providing there was no

[783a]

damage in moving. To my knowledge, our equipment is moved frequently, either within plants or from plant to plant, with no adverse effect. Machine condition can be a major factor in determining the impact of movement, but any machine that has had normal care should be able to be moved without adversely affecting its performance. Very truly yours, The Warner-Swasey Company, R.T. Studer, Vice President—Manufacturing."

Mr. Brazil: As to D-66, I move for the introduction of that exhibit.

The Court: What Warner-Swasey machines were on the west side?

The Witness: May item #27. My item #29. My item #30. Those three.

The Court: All right. D-66 is admitted in evidence.

Mr. Brazil: Did you see these?

The Court: Well, this has been read. There has been mention of it and it has been read.

Mr. Brazil: That is D-65.

The Court: Yes.

Mr. Brazil: I would ask that this exhibit be marked D-67.

Young-direct

[792a]

machines that were at the Pennsylvania Machine Works at the northwest corner of Bambrey and Morris Streets and 1617 to 25 Bambrey Street?

A. Yes, I did.

Q. Do you remember the date you examined them?

A. I can refer to my letter, October the 27th, 1972.

Q. Did the machinery appear to you to be modified to the extent that it would not be moveable?

A. Not at all.

Q. Would the fact that the machines may have been rebuilt affect their movability?

A. Not in my opinion.

Q. Have you ever moved machines of this type?

A. Many, many times.

Q. Do you see any reason why these machines could not be moved and reinstalled at a new location and operate in as good a working order as prior to the move?

A. None whatsoever.

Q. In your opinion, can all of the items, machines and equipment, as located in the Pennsylvania Machine Works at the northwest corner of Bambrey Street and Morris Street and 1617-25 Bambrey Street be disconnected, moved and reinstalled at another location and be in as good an operating condition as they were prior to the move?

Young-redirect
Behmer

[821a]

A. It has not been started yet, not those that we have been awarded.

Q. But the other jobs that you were awarded, you moved the machines and reinstalled them at the new site?

A. Yes, the others we did.

Mr. Brazil: Thank you. Nothing further.

The Court: Thank you, Mr. Young.

(Witness excused.)

Mr. Brazil: Mr. Behmer, take the stand.

Joseph Behmer, (Schwenksville, Pennsylvania,) sworn.

Direct Examination

Mr. Sigismondi: Your Honor, I would make the same motion with reference to this witness as I had with reference to Charles Young of the George Young Company—that is: is this witness produced pursuant to Section 703, Sub-section Two of the Eminent Domain Code?

The Court: Do you want an offer of proof

[822a]

at sidebar?

Mr. Sigismondi: Yes.

(The following at sidebar outside the hearing of the Jury:)

The Court: What do you intend to show by the production of this witness?

Mr. Brazil: I intend to show, Mr. Behmer is a tool and die maker, that he has his own machine shop, that he is familiar with the types of machines used in the subject plant; he is also quite familiar with the types of machinery that were allegedly used, that had to be rebuilt, that is these machines on the east side of Bambrey Street, and he would testify that they did not have machines on the east side of Bambrey Street that were capable of reboring the bases in these machines

and rebuilding the machines the way it was testified to;

Also, he will testify that there will be no problem to recreate the assembled economic unit at the new location.

Mr. Sigismondi: I would object. He is

Behmer-direct

[835a]

I had some machines, old machines when I first started some years ago, and as I could afford to replace them, until I was able to buy new machines altogether, I would just go along and as I could afford it, I would replace them.

There is no similarity between old and new.

Q. Did you ever buy a used machine and spend ten times as much money on the machine to fix it up as the purchase?

A. No. It does not pay to buy a used machine and throw that money into it.

I bought a used machine and strapped them together, planed them away. I bought a shaper once like we had on a twenty-four inch shaper. I went to a plant that had a big planer and I reworked the carriage and everything else. I reworked the table and scraped it with a hand scraper so that it would operate. This is not efficient.

Q. Did you see any problem moving these machines in there?

A. No, no problem at all.

Q. Do you think they could be moved without substantial injury?

A. No reason why they could not be moved. We have moved machines that worked within six-tenths of a thous-

Behmer-direct cross

[836a]

andths and guaranteed, this one machine that came in from Switzerland, it was guaranteed to be able to be operate across the table within four-tenths and two-tenths of a thousandth, which is much more superior to a screw type machine or a chuck lathe or anything like this—they are moved every day in the week.

Q. Would you give me, in your opinion, as to whether these machines could be moved from their present location and say reinstalled in a new location, say in Delaware County, without substantial injury to the machines?

A. I see no reason why not, that it should not be moved.

Q. With those machines, as they are moved, consist of a comparable economic unit at the new location, if they were moved from 25th and Morris Street?

A. If they are set up properly, there is no problem. It could be the same economic unit as before, so long as it is set up the same way.

Mr. Brazil: Your witness.

Cross Examination

By Mr. Sigismondi:

* * *

Behmer-cross

[839a]

Q. Could it be done?

A. It could be done, yes. It could not be done on the equipment that was down there, not with that equipment that I saw.

Q. We will get to that equipment in a minute. By the way, you didn't see the equipment on our east side?

A. No, I didn't. Just pictures.

Q. How do you know it could not be done with our equipment?

A. The equipment, the shapers indicate what can be done. If you give me a ten inch shaper, you can't do a twenty inch.

Q. You are positive that we could not enlarge the boring in a hub or bushings?

A. Plus the fact it is also rebuilt on the site. Now, if you want to rebuild a Warner Swasey turret lathe, you have to drag it on the west side which is physically impossible.

Q. Would it surprise you to know that is exactly what we did?

A. You brought in a boring milling.

Q. What is known as a portable tool, yes, for the boring out, the best we could, would it surprise you to know what we did exactly was that?

[840a]

A. It wouldn't do, this portable equipment, it wouldn't do. It has been used some year ago. It came out during the war, with the automobile cylinders, they used that type of portable equipment. You would clamp it on, that type. It is not applicable for the stroke, to do that type of job. The stroke of the machine was not applicable, it was too short. You can do it, but it would take an awful lot of sweat.

Q. You mean it would take a lot of ability?

A. No, not really, just a question of fixing a run on it.

Q. You can do it, but does not take ability, is that it?

A. A machinist can do it. A good machinist can do it.

Q. Well, you heard the testimony in the beginning of this case, you heard Mr. Charles Lafferty testify?

A. Yes.

Q. He was born and raised in this business.

A. Yes.

Q. Would you say that he might be a good machinist?

A. I don't know anything about his background. If he worked in the office or shop, I don't know his phase in the job. From his appearance, I think he worked in the shop.

B. Excerpts from the transcript of the Board of Viewers' hearing in the same case of Charles J. Lafferty et al. vs. School District of Philadelphia, Court of Common Pleas of Philadelphia County, February Term, 1970, No. 942, Held, November 17, 30, 1970.

Lafferty-direct

[16b]

Q. Now, are they high precision machines?

A. Yes, they are.

Q. And did you make special tools and dies for these machines?

A. Yes, a considerable amount.

Q. Incidentally, how were these machines placed into the position that they are now?

A. We bought these machines from various places in the country. We have had them brought into our place by riggers. We tear them down. We tear them completely down to the frame.

Q. Why?

A. Because in the moving of these machines, particularly the older machines, you distort the frames. You knock thing out of line like bearings, spindles and slides and what not.

Q. Now, you receive the machines, tear them down?

A. Tear them down. We put the frame in place, level it up and start from there and completely rebuild them.

Q. Did you do that to every one of those machines in your plant?

A. The biggest percentage of them, yes.

Q. Have you an opinion as to whether or not these machines can be moved without any injury to them, the machines themselves?

[17b]

A. Yes, from past experience of buying this equipment and moving it, there is no end to the damage that could be done to them.

Q. Incidentally, how long did it take to put these machines in place where you have them now?

A. It depends upon the damage that was done to them.

Q. How long did it take to get your machine shop set up the way you have it now, to tear down the machines and build them into place?

A. When we bought the last building, to assemble that production facility through there, it took us approximately three years.

Q. To finally complete it?

A. That is right.

Q. How long did it take the average machine to be repaired and put into place?

A. The two main pieces there that we spent over a year getting running.

Q. Now, you say that these machines would be injured or harmed. Would that be significant or substantial injury or harm to each machine if they were moved?

A. Yes.

Q. What percentage of the machines would you say would be injured or harmed?

A. I'd say the biggest percentage of them.

Lafferty-cross

[18b]

Mr. Sigismondi: Cross examine.
Cross examination

By Mr. Horowitz:

Q. You made a big point about two-phase power?

A. Yes.

Q. If you were to move to a new location that is not presently two-phase, can it be turned into two-phase?

A. They have phase changers that they sell to convert to three-phase but the cost of the phase changer to accommodate all this horsepower and equipment that we have would be almost prohibitive.

Q. You say the machines that you have there are high precision machines. What do you mean by that? I don't understand it.

A. They are accurate machines. We do an awful lot of work for the Atomic Energy Commission and they have tolerances where you have to work within tenths of a thousand on them.

Q. Most of your machines are that accurate?

A. Yes, positively, positively.

Q. You mentioned that when you brought the machines in they came in by riggers and they were disassembled. Where does this disassembly take place?

A. Right on the premises.

[19b]

Q. What part of the premises?

A. On the east side of the street is where we disassemble; on the east side of Bambrey Street.

Q. In a separate building?

A. Yes.

Q. And what do you do in that building, disassemble?

A. Disassemble, take the frame over to the manufacturing side, which is the west side of the street, completely level the frame up over there; make all new parts, tooling, and all on the east side of the street, and take them across and assemble them right in place where the machine is going to be.

Q. Right in place?

A. Yes.

Q. You do most of the work across the street and then assemble in place?

A. Yes, right.

Q. You mentioned that these machines are damaged, especially the older machines. What do you mean by the older machines?

A. Well, these aren't the type of machine that you can use in everyday jobbing work. They are pretty specialized for the manufacture of pipe fittings and a lot of these machines they don't build any more. The manu-

[20b]

facturers have gone out of business, and to get these machines, the only way you can buy them is on the used machinery market.

Q. You buy them at fairly reasonable prices, don't you?

A. Not all the times, no. The fact they are scarce, they are no longer manufactured, for some of these machines we pay close to new prices.

Q. Close to new prices?

A. Close to new prices.

Q. Some of them, a good number of them, you get fairly reasonable because somebody else can't use them; is that true?

A. No, it is not true.

Q. You get them fairly reasonable?

A. No, some of them, as far as actual purchase price goes, we may get fairly reasonable but when we are finished it is not reasonable. In many instances we have more involved in the machine than we can have gone out and bought brand new, if manufactured.

Q. You get the particular machine at a reasonable price because it is old or obsolete, and then you take it into your shop across the street and rebuild it and bring it in but the initial price is reasonable?

A. Not in all cases. I would say in 50% of the equipment

* * *

Bianco-direct

[49b]

A. Yes, with the descriptions.

Q. That they are precision machines and manufacture what was said to be manufactured?

A. Yes, I am very familiar with the type of machinery involved, all the types.

Q. Can you tell us whether, in your judgment, these machines were built into place as was testified to by Mr. Lafferty?

A. Yes, they were previously moved and, of course, in moving machinery, a precision machine is formed of spindled bearings, slides and ways, and when a machine is in place for a period of years it takes a set, just like anything else, a piece of furniture. It, gradually, over the years takes a set. It will distort and the bearings will wear so gradually that the machine will still operate but the minute you move the machine the slightest distortion will pinch the bearings and ways and the parts will have to be replaced. The machine would not be able to operate the way it is.

Q. Are you referring to the automatic screw machines?

A. Well, the chuckers, turret lathes, all comprised with spindles. They are all relative machinery to each other.

Q. Can you give us an idea how many of these machines,

* * *

[53b]

experience in moving plants that I would say 40 or 45% of those machines would definitely be damaged or would need some kind of rebuilding or probably extensive rebuilding, once they are disturbed from their present lodging.

By Mr. Sigismondi:

Q. Have you formed an opinion as to whether or not the machines that would be moved moved from that plant could form a new economic unit such as we had before?

Mr. Horowitz: Objection, unless you define 'economic unit' for this gentleman.

Mr. Heuges: We assume he understands the English language. As a matter of fact, maybe we lawyers don't fully understand it either.

The Witness: I can only say that if the remaining machinery, say 60% of it, will form production as he has it now, yes, but if 60% of that machinery will not form an economic unit which I am pretty certain will not because you need most of the machinery in that plant, you need for that type of operation, because of the fact that a part, when it is cut from raw material, has to go from one machine to another for its individual operation so if you do No. 1 or 2 operation and you don't have

* * *

C. Excerpts from the transcript of the criminal trial of Commonwealth vs. Charles J. Lafferty, in the Court of Common Pleas of Philadelphia County, Criminal Section, August Term, 1977, No. 1499, Held 2-24-78 to 3-6-78.

[492]

Mr. Wilbraham: No, Sir.

Mr. Kidd: Could I show it to the jury?

(Whereupon the photograph is exhibited to the jurors.)

The Court: Mr. Kidd, proceed.

By Mr. Kidd:

Q. Mr. Lafferty, at the time that you testified in the civil trial, in 1974, did you honestly and sincerely believe that there were taper roller bearings in that machine, number 273?

A. As best as I could remember, I believed that there were taper roller bearings in machine 273.

Q. Sir, going back to 1965 through 1968, is that when the Goss and De Leeuw machines, number 273 and 275, were acquired by the Pennsylvania Machine Works?

A. The two machines, number 273 and 275, were acquired by Pennsylvania Machine Works in April, 1966, and they were delivered in May of 1966.

Q. Approximately how long did it take to work on those machines? Well, were those machines operational when they were received?

A. They positively were not.

* * *

[494]

far as I can remember from trying to recall, from memory, it took approximately one year.

Q. During that period of one year, say approximately from May, 1966, until May, 1967, did you personally work on that machine?

A. Yes, I did personally work on that machine.

Q. Did you work on it with any other people that you can remember?

A. Yes, I remember Francis McDowell and Stanley Kosloski, my father and my brother.

Q. Now, Sir, did anything unusual happen to you during that period of time, from May, 1966 until May, 1967?

A. Yes, in October of 1966 I had an accident with a forklift truck and broke my leg.

Q. Was that accident involved directly or indirectly with the disassembly or the assembly of the Goss and De Leeuw 11 by 10-inch chucker?

A. Yes, it was. I was carrying a slide portion of that machine on the forks, from the west side of the street to the east side of the street, when I had the accident.

[495]

Q. Sir, were you incapacitated by your broken leg?

A. To an extent; my leg was in a cast, and I couldn't do the heavy work that I had been doing prior to breaking it.

Q. Were you incapacitated for a period of approximately two months?

A. I was in a cast for approximately two months and I was still hobbling around considerably longer than that.

Q. Did this occur during the time that the Goss and De Leeuw was being disassembled and reassembled?

A. Yes, it did.

Q. Sir, prior to the time that the Goss and De Leeuw was being—during the time it was being disassembled and assembled were there ever conversations with regard to putting in taper roller bearings, into that machine?

A. Numerous times.

Q. And did these conversations occur at any specific time or place?

A. Well, usually at lunchtime, as had been explained earlier, we all used to sit around this heater

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and eat our lunch and discuss these matters.

Q. After you had your cast off, and I assume that's sometime in January or February, 1967?

A. As best I can remember, yes.

Q. Sir, did you at that time become involved with another part of the machine shop or a new machine shop or anything such as that?

A. Well, in 1967 we had bought a property in Swedesboro, New Jersey, to construct a forge shop, and on a part-time basis I was working off and on, over

in Swedesboro, putting a building up and getting some equipment together, to operate the forge shop.

Q. During the time that the Goss and De Leeuw 11 by 10-inch chucker, 273 and 275, were being disassembled and assembled, were there other pieces of production machinery, on the west side of Bambrey Street, that were being assembled and disassembled during that period of 1965 through 1968?

A. From memory I would say possibly; I can't say for sure at the precise time.

Q. You mean for that three-year period you can't remember whether there were machines being disassembled

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on the other side, west side of Bambrey street?

A. Off and on, I would say yes.

Q. Were all the machines that eventually went into the west side of Bambrey Street, were they used machines?

A. Yes, every one of them.

Q. Were those used machines handled in the same manner, were they disassembled and assembled?

A. Yes.

Q. And did they all take a significant period of time?

A. Yes.

Q. Sir, did you work on those off and on, those other pieces of machinery, on that west side?

A. Yes, I did.

Q. Are there approximately 20 other major pieces of machinery on the west side of Bambrey Street?

A. Approximately, yes.

Q. Are there other Goss and De Leeuw machines on on the west side of Bambrey Street?

A. Yes, there is.

Q. How many are there, that you recall?

A. As I recall, there were five 6-inch Goss and De

* * *

[502]

De Leeuw 11 by 10-inch chuckers?

A. No, I never did.

Q. What happened in September, 1972, were the premises then vacated by your business?

A. Yes, on September 2nd, or September sixth, 1972, we had a court order evicting us, and we moved out over the Labor Day Weekend.

Q. From September, 1972, was it approximately 21 months until the time that the trial started, the civil trial in this case?

A. Yes, the second trial.

Q. During that 21-month period did you ever have an opportunity or access to go back into the premises at Bambrey Street and look at the Goss and De Leeuw machines?

A. No, we did not. It was in custody of the Philadelphia School Board.

Q. In fact, there were other locks and everything else on the property?

A. As was explained earlier, they had guard dogs in there.

Q. Taking you up to June 17, 1974, is that

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approximately seven years after the Goss and De Leeuw machine was disassembled and assembled?

A. Between seven and eight years, yes.

Q. Do you recall how long you testified, over what period of time, in that trial?

A. Approximately two days, in direct and a half a day in cross-examination.

Q. Sir, in preparation for that trial, did you work with your attorney, Mr. Augustus Sigismonde?

A. To an extent, yes.

Q. Sir, in preparing for it, was there a discussion with regard to using a piece of machinery as an illustration of the rehabilitation of a machine?

A. Yes.

Q. And at that time was it decided which machine to use?

A. We had decided on a five and three-quarter inch Cleveland Single Spindle Automatic, because, as I remember now, that was the most recent machine that they had rebuilt prior to condemnation.

Q. Did you make extensive notes with regard to what you were going to testify to, concerning that other

[504]

machine?

A. Yes, I did.

Q. Did anything happen after the first day of the trial, where you decided to testify with regard to another machine?

A. Well, somebody made a big point about receipts of the purchase price for the particular machines that we were going to testify about, and as I explained in that past trial, me and my brothers had looked until ten o'clock that night for a receipt for the machine that I was going to testify to; we could not find it. So, I decided to testify on 273 and 275, because that was the only receipt I could find for the machine.

Q. At what time of night was that decision made, to testify about the number 275 Goss and De Leeuw machine?

A. Ten o'clock at night prior to the day of my testimony.

Q. You had already started testifying, did you not?

A. Yes, I did.

Q. At ten o'clock, when you found the receipt

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concerning the Goss and De Leeuw machines, did you have a discussion as to what happened when that was assembled or disassembled with your brothers?

A. No, I did not.

Q. What happened the next morning?

A. The next morning I met my lawyer, in his office, and I had told him of the change in the machine I was going to testify to, and he asked me if I had established cost for the rebuilding of it and I said I was working on it, which I was; it became time to go to court, we arrived at the courthouse and I finished building the notes on the cost of rebuilding the machinery, as best I could, from memory, in the men's room of the courthouse.

Q. Did you immediately go back into the courtroom on June 18, 1974?

A. Yes, I did.

Q. Right back onto the witness stand?

A. Right back on the witness stand.

Q. Sir, from June 18, 1974, until June 1, 1977, did you ever have any indications or knowledge that there were not taper roller bearings in the Goss and De Leeuw

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machines?

A. No, I believed they had taper roller bearings in them.

Q. Up until at least June, 1977?

A. Until the day I was arrested.

Q. Did you find anything out after you were arrested, that they were not taper roller bearings in that machine?

A. I asked the two employees who I believed done the most work on them machines, Francis McDowell and Stanley Kosloski, and they both told me that there were not taper roller bearings in that machine.

Q. Were you surprised?

Mr. Wilbraham: Objection.

The Court: Objection sustained.

By Mr. Kidd:

Q. When did that occur, Sir?

A. The exact date, I cannot tell you but it was very shortly after my arrest.

Q. Sir, when was the first time that you physically saw that there were not taper roller bearings in the machine?

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A. The week between Christmas and New Year's of 1977, when myself and a crew of people went down there to disassemble machine 273.

The Court: Read that back.

(Whereupon the answer is read by the court reporter.)

By Mr. Kidd:

Q. Sir, was that approximately ten years after the machine was resembled and operational?

A. Approximately, yes.

Q. Sir, there is no question in your mind today that there were not taper roller bearings in that machine?

A. No, I could see they were taper lock bearings.

Q. Sir, did you ever count or have anyone count for you the total number of parts just in the Goss and De Leeuw machine?

A. Yes, two of our employees, my son and, I believe, it was Francis McDowell, personally counted the parts on an 11-inch Goss.

Q. How many were in there, Sir?

A. Well, there was a difference of opinion as to

[508]

how many parts. I believe one said 2200 parts and the other one said 2500 parts.

By the Court:

Q. Does that include nuts, bolts and washers?

A. I didn't ask them that question.

By Mr. Kidd:

Q. Now, Sir, you have heard testimony with regard to welding the hubs?

A. Yes.

Q. Sir, if you had put taper roller bearings in the machine would that have required reboring the holes?

A. Yes, it would have required reboring the holes.

Q. How much increase in the diameter would that have caused in the holes that we have seen many pictures of during this trial?

A. Well, I have found out since that it would only require a quarter of an inch on the diameter, but at the time I thought it would have been considerable more.

Q. Sir, if you had drilled or if you had rebored those holes and put taper roller bearings on the machine, would it have required welding of the hubs?

A. I don't believe it would have, no.

* * *

[512]

A. Yes, I would say a visual picture I had in my mind was from five and a half to six inches.

Q. Is the actual size of the hole, without the taper roller bearings, but the size of the hole that's in there now, and was in there at the time that you testified, is that not larger than what you thought the size was at that time?

A. Yes, it's $\frac{7}{8}$ ths of an inch larger actually than what I had testified to it being.

Q. So that if you were correct in your testimony, you indicated that the size would have only been how much?

A. Five and a half inches, I believe.

Q. And the actual size of the hole was?

A. Six and $\frac{3}{8}$ inches.

Q. Did you make other mistakes in your testimony?

A. Several other mistakes, one being of water boiling at a 120 degrees and as the judge pointed out, it's 212 degrees Fahrenheit.

The Court: I don't recall that I pointed it out. Let the record show that. Even though it's a matter of which the court could take judicial notice, it

* * *

[515]

these machines were rebuilt?

A. No, there is no question at all in my mind that they were rebuilt.

Q. Do you recall that you testified—strike that. Do you recall whether you testified with regard to the Goss and De Leeuw, to the best of your recollection?

A. Well, like I said, I was testifying to something that had happened eight years previous and I was strictly relying on memory, for my testimony.

Q. Do you recall whether in your testimony you specifically qualified it as the best of your recollection should?

Mr. Wilbraham: Objection.

The Court: Objection sustained. The record will speak for itself.

By Mr. Kidd:

Q. Sir, in the previous trial you gave an opinion—
The Court: May I see counsel, please.

(Following takes place at sidebar:)

The Court: I think the objection as to your question was properly sustained. However, the

* * *

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objection really goes to the form of the question. You are not prevented from inquiry in that area.
(Following resumes before the jury:)

By Mr. Kidd:

Q. Referring you back to the trial on June 17, June 18, 1974, did you testify with regard to other modifications and changes that were made to the machine?

A. Yes, I generalized on other pieces of equipment.

Q. Were those statements true with regard to what other modifications and changes occurred to the machine?

A. To the best of my knowledge, yes, they were true.

Q. Do you recall on that trial whether you expressed an opinion with regard to the movability of the machinery?

A. Yes, I did.

Q. Sir, what was that opinion?

Mr. Wilbraham: Objection.

The Court: Sidebar, gentlemen.

(Following takes place at sidebar:)

Mr. Wilbraham: Your honor, the

* * *

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material, because this was one of the questions, one of the interrogatories that was specifically put to the jury.

Mr. Kidd: That's correct, your honor.

The Court: In the civil case. I think the record speaks for itself as far as what he testified to. However, if you want to explore it further, that's another matter.

Mr. Kidd: I will do it that way.

(Following resumes before the jury:)

The Court: Objection sustained, ladies and gentlemen, because the record speaks for itself, as to what was actually testified to.

By Mr. Kidd:

Q. Sir, has your opinion changed? Let me withdraw that question.

Sir, now that you know there are not taper roller bearings in the machine has your opinion changed with regard to the movability of the machinery?

Mr. Wilbraham: Objection.

The Court: Sidebar.

Mr. Wilbraham: Your honor, I withdraw the

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objection. If counsel wants to have this witness testify that it's not movable, let him.

The Court: Go ahead. You may answer the question. Do you remember the question?

The Witness: No. Ask it again.

The Court: Repeat the question, Mr. Katz.

(Whereupon the court reporter reads the question.)

The Witness: No. From my previous experience, like I said, I believe in my heart that those machines could not possibly be moved without significant damage.

By Mr. Kidd:

Q. Sir, in your opinion, would you have had to rip them down and rebuild them again?

A. In my opinion, we would have to start all over again with them, yes.

Q. Sir, have you ever been arrested or convicted of a felony or a misdemeanor?

Mr. Wilbraham: Objection.

The Court: Sidebar.

(Following takes place at sidebar:)

* * *

[532]

done on the machines. Is that correct?

A. That is correct, Sir.

Q. But it's your testimony that you were mistaken about the work on the machine, but that you were correct about where the machines were bought from. Is that correct?

A. Yes, Sir.

Q. And Sir, it's your testimony today that you were correct in your testimony about the machines being torn down, however, you were incorrect about

what type of work was done on the machine; correct?

A. That is correct.

Q. Now, Sir, it's your testimony today that you personally worked on those 11-inch Goss and De Leeuw machines. Is that correct?

A. Yes, Sir.

Q. By the way, do you recall being cross-examined by Mr. Brazil, the attorney for the School Board, about this personal knowledge that you had about these 11-inch Goss and De Leeuw machines?

A. Yes, I do.

Q. Namely, Sir, I'm referring to the question at

D. The Order of the Court of Common Pleas of Philadelphia County, criminal Section, granting a new trial in the case of Commonwealth vs. Charles J. Lafferty, August Term, 1977, No. 1499.

**IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA
TRIAL DIVISION — CRIMINAL SECTION**

COMMONWEALTH	:	AUGUST TERM, 1977
vs.	:	
	:	
CHARLES J. LAFFERTY	:	NO. 1499
ANDERSON, J.	:	

ORDER

AND NOW, this 13th day of September, 1978, it is hereby ORDERED and DECREED that defendant's Motion in Arrest of Judgment is DENIED.

It is further ORDERED and DECREED that defendant's Motion for a New Trial is GRANTED.

BY THE COURT:
s/ LEVY ANDERSON

J.

E. Page A26, from the Federal Reserve Bulletin of August, 1979, showing the prime rate of interest in the United States, August 1978 through July 1979, and Statistical Release for August, 1979.

A26 Domestic Financial Statistics □ August 1979

1.34 PRIME RATE CHARGED BY BANKS ON Short-term Business Loans

Percent per annum

Effective date	Rate	Effective date	Rate	Month	Average rate	Month	Average rate
1978—May 5.....	8¼	1978—Oct. 13.....	10	1977—Oct.....	7.52	1978—Sept.....	9.41
June 26.....	8½	Nov. 27.....	10¼	Nov.....	7.75	Oct.....	9.94
June 30.....	8¾	Nov. 1.....	10½	Dec.....	7.75	Nov.....	10.94
Aug. 31.....	9¼	17.....	11	1978—Jan.....	7.93	Dec.....	11.55
Sept. 15.....	9½	24.....	11½	Feb.....	8.00	1979—Jan.....	11.75
Sept. 28.....	9¾	Dec. 26.....	11¾	Mar.....	8.00	Feb.....	11.75
		1979—June 19.....	11½	Apr.....	8.27	Mar.....	11.75
		July 27.....	11¾	May.....	8.63	Apr.....	11.75
				June.....	9.00	May.....	11.75
				July.....	9.01	June.....	11.65
						July.....	11.54

1.35 TERMS OF LENDING AT COMMERCIAL BANKS Survey of Loans Made, May 7-12, 1979

Item	All sizes	Size of loan (in thousands of dollars)					
		1-24	25-49	50-99	100-499	500-999	1,000 and over
SHORT-TERM COMMERCIAL AND INDUSTRIAL LOANS							
1 Amount of loans (thousands of dollars).....	8,576,070	949,806	637,101	588,718	1,427,889	673,770	4,298,785
2 Number of loans.....	162,509	122,951	19,944	9,112	8,161	1,061	1,281
3 Weighted average maturity (months).....	2.9	3.4	3.3	3.2	3.1	3.2	2.5
4 Weighted average interest rate (percent per annum).....	12.34	12.30	12.69	13.02	12.61	12.68	12.07
5 Interquartile range ¹	11.50-13.02	10.67-13.42	11.19-13.83	12.36-13.75	12.00-13.37	12.16-13.17	11.50-12.40
Percentage of amount of loans							
6 With floating rate.....	47.6	20.8	25.4	29.2	48.7	65.4	56.2
7 Made under commitment.....	47.2	24.0	30.0	44.2	47.6	60.0	53.2
LONG-TERM COMMERCIAL AND INDUSTRIAL LOANS							
8 Amount of loans (thousands of dollars).....	1,485,131						
9 Number of loans.....	25,164						
10 Weighted average maturity (months).....	48.2						
11 Weighted average interest rate (percent per annum).....	12.08						
12 Interquartile range ¹	11.30-13.16						
Percentage of amount of loans							
13 With floating rate.....	47.4						
14 Made under commitment.....	50.0						
CONSTRUCTION AND LAND DEVELOPMENT LOANS							
15 Amount of loans (thousands of dollars).....	1,019,842	96,803	108,609	131,421	307,713	375,295	
16 Number of loans.....	18,490	11,506	3,209	1,826	1,680	268	
17 Weighted average maturity (months).....	7.6	8.9	6.3	7.7	8.4	6.9	
18 Weighted average interest rate (percent per annum).....	12.23	12.39	11.94	11.89	12.36	12.28	
19 Interquartile range ¹	11.25-13.45	11.30-13.35	10.76-12.62	10.00-12.73	10.64-13.72	11.25-13.75	
Percentage of amount of loans							
20 With floating rate.....	49.3	28.5	19.6	44.5	40.3	72.4	
21 Secured by real estate.....	79.5	87.7	96.4	95.1	70.3	74.7	
22 Made under commitment.....	50.3	45.9	23.4	27.0	41.2	74.9	
Type of construction							
23 1- to 4-family.....	43.0	81.5	75.2	76.8	41.9	12.7	
24 Multifamily.....	11.6	2.3	2.0	2.5	8.5	22.7	
24 Nonresidential.....	45.4	16.1	22.8	20.7	49.7	64.6	
LOANS TO FARMERS							
26 Amount of loans (thousands of dollars).....	1,057,427	200,607	181,082	145,374	178,938	157,441	193,955
27 Number of loans.....	74,330	53,495	12,330	4,309	2,717	1,104	275
28 Weighted average maturity (months).....	7.5	8.1	8.5	6.5	11.4	5.4	5.0
29 Weighted average interest rate (percent per annum).....	11.20	10.56	10.69	10.73	10.89	11.97	12.35
30 Interquartile range ¹	10.21-12.24	9.88-11.19	10.00-11.24	10.00-11.46	10.12-11.30	11.00-13.16	11.41-13.52
By purpose of loan							
31 Feeder livestock.....	11.21	10.57	10.68	10.83	10.80	11.52	12.31
32 Other livestock.....	11.74	10.46	10.08	10.11	11.96	12.83	(2)
33 Other current operating expenses.....	11.20	10.52	10.95	10.87	11.00	12.41	12.50
34 Farm machinery and equipment.....	10.61	10.70	10.27	10.40	11.52	(2)	(2)
35 Other.....	11.15	10.70	10.82	10.95	10.03	11.79	12.70

1. Interest rate range that covers the middle 50 percent of the total dollar amount of loans made.

2. Fewer than 10 sample loans.

NOTE: For more detail, see the Board's G. 14 (416) statistical release.



H.15(519) SEP 10 1979

FEDERAL RESERVE BANK OF PHILADELPHIA

FEDERAL RESERVE statistical release

SELECTED INTEREST RATES AND BOND PRICES
(Yields in per cent per annum)
Calendar week ending August 25, 1979

For Immediate Release
August 27, 1979

Instruments	August 20	August 21	August 22	August 23	August 24	This Week ^{2/}	Last Week ^{2/}	Year Ago ^{1/}
Federal funds (effective rate)	11.12	10.99	10.91	11.01	11.19	11.04 ^{2/}	10.80 ^{2/}	8.14 ^{2/}
Commercial paper (prime, 90 to 119 days)	10.52	10.57	10.62	10.62	10.70	10.61	10.37	7.88
Commercial paper (prime, 4 to 6 mos.)	10.47	10.51	10.58	10.57	10.69	10.56	10.32	7.95
Finance paper placed directly (3 to 6 mos.)	9.80	9.89	9.91	9.97	9.99	9.91	9.79	7.67
Bankers' acceptances (prime, 90 days)	10.73	10.73	10.79	10.84	11.00	10.82	10.60	8.07
Prime loan (large business prime rate-majority)	12.00	12.00	12.00	12.00	12.00	12.00	12.00	9.00
Discount rate (Federal Reserve Bank of New York)	10.50	10.50	10.50	10.50	10.50	10.50	10.50	7.75
Yields on U.S. Government securities: ^{3/}								
Auction Average (Issue date):								
3-month bill				9.599		9.599	9.495	7.267
6-month bill				9.504		9.504	9.481	7.471
1-year bill		9.189						
Market Yields:								
3-month bill	9.50	9.54	9.56	9.53	9.64	9.55	9.52	7.25
6-month bill	9.43	9.52	9.53	9.53	9.63	9.53	9.47	7.46
1-year bill	9.20	9.24	9.27	9.27	9.40	9.28	9.15	7.79
Treasury constant maturities: ^{4/}								
1-year	10.05	10.11	10.14	10.13	10.27	10.14	9.95	8.40
2-year	9.45	9.51	9.55	9.63	9.72	9.57	9.38	8.44
3-year	9.12	9.18	9.20	9.21	9.31	9.20	9.06	8.35
5-year	9.05	9.09	9.11	9.11	9.19	9.11	9.01	8.35
7-year	9.03	9.07	9.08	9.09	9.17	9.09	9.00	8.36
10-year	9.02	9.04	9.04	9.05	9.14	9.06	9.00	8.37
20-year	8.94	8.95	8.97	8.98	9.02	8.97	8.95	8.42
30-year	8.96	8.99	8.99	9.00	9.05	9.00	8.96	8.45
Coupon issues due in: ^{5/}								
3 to 5 years	9.05	9.09	9.12	9.13	9.22	9.12	9.02	8.33
Average yields on corporate bonds (Moody's)	9.73	9.74	9.74	9.74	9.75	9.74	9.72	9.07
Aaa	9.19	9.23	9.24	9.24	9.25	9.23	9.20	8.69
Baa	10.35	10.34	10.34	10.35	10.35	10.35	10.34	9.46
State and local government Aaa (Moody's)				5.75		5.75	5.70	5.60

^{1/} As of week ending August 26, 1978.

^{2/} 7-day average for statement week ended on preceding Wednesday.

^{3/} Bills quoted on bank discount basis.

^{4/} Yields on actively traded issues adjusted to constant maturities. Source: U.S. Treasury.

^{5/} Unweighted average for all issues outstanding.

F. Private Placement Memorandum of the School District of Philadelphia, dated January 16, 1978, for issuance of \$50,000,000.00 General Obligation Refunding Bonds, Series, 1978.

Purchaser

Private Placement Memorandum
relating to

THE SCHOOL DISTRICT OF PHILADELPHIA
PENNSYLVANIA

\$50,000,000

GENERAL OBLIGATION FUNDING BONDS,
SERIES OF 1978

Dated: January 16, 1978

Due: In installments on
on January 16 of the
years 1979-1982 and
January 15 of the
year 1983

Interest Payable: Semi-annually
on January 16 and July 16 of
the years 1978-1982 inclusive,
beginning July 16, 1978, and
January 15, 1983.

<u>Installment Maturity</u>	<u>Amount</u>	<u>Installment Maturity</u>	<u>Amount</u>
1/16/79	\$10,000,000	1/16/82	\$10,000,000
1/16/80	10,000,000	1/15/83	10,000,000
1/16/81	10,000,000		

Interest Rate: 8%

Tax Exemption: Under existing Pennsylvania statutes, the Series of 1978 Bonds and the income therefrom are free from taxation within the Commonwealth of Pennsylvania; this exemption does not extend to Pennsylvania inheritance and real estate taxation, or any other taxes not levied or assessed directly on the Bonds or the interest thereon; and interest on the Series of 1978 Bonds is exempt, under present statutes, regulations and decisions, from present Federal income taxes.

Security: The Series of 1978 Bonds are general obligations of the School District, and the entire and full faith, credit and taxing power of the School District have been pledged for punctual payment of the principal of and interest on the Series of 1978 Bonds when due. In addition, the School District has agreed to certain covenants which are summarized in "Security for the Series of 1978 Bonds", herein.

Redemption Provisions:

The Series of 1978 Bonds are subject to prepayment in whole or in part at the option of the School District at any time upon payment of the principal amount thereof or an authorized portion thereof (in increments of not less than \$500,000) plus interest accrued to the date of such prepayment.

These Series of 1978 Bonds are offered by the School District to a consortium of institutional investors. They will be issued under a Bond Purchase Agreement to be made with the purchasers, and their issuance will be subject to the approval of legality of the Series of 1978 Bonds by Messrs. Dilworth, Paxson, Kalish, Levy & Kauffman, Philadelphia, Pennsylvania, bond counsel to the School District and by Messrs. Saul, Ewing, Remick & Saul, Philadelphia, Pennsylvania, counsel to the purchasers. It is expected that the Series of 1978 Bonds in definitive form will be available for delivery on or about January 16, 1978.

Dated: January 12, 1978

F. Letter of Arthur W. Thomas, President of the Philadelphia School Board, dated January 16, 1978, to the First Pennsylvania Bank, N.A., delivering said bonds, and requesting that the sum of \$50,000,000.00 be deposited to the credit of the School District of Philadelphia General Fund Account 030-628-2.

TRANSMITTAL AND RECEIPT

January 16, 1978

First Pennsylvania Bank N.A.
Centre Square West
Philadelphia, Pennsylvania 19102

Re: The School District of Philadelphia
\$50,000,000 Principal Amount General
Obligation Funding Bonds, Series of
1978, Dated January 16, 1978

Gentlemen:

We hand you herewith \$50,000,000 principal amount of General Obligation Funding Bonds, Series of 1978, bearing interest at the annual rate of eight percent (8%). The Bonds are dated January 16, 1978, mature in installments, are fully executed, in definitive, typewritten form, fully registered in the respective names and in the respective amounts as follows:

<u>Registered Owner</u>	<u>Principal Amount</u>
First Pennsylvania Bank N.A.	\$9,150,000
The Philadelphia National Bank ...	5,490,000
Girard Trust Bank	4,800,000
The Fidelity Bank	3,900,000
Provident National Bank	2,130,000
Continental Bank	1,620,000
Industrial Valley Bank and Trust Company	1,560,000
Central Penn National Bank	990,000

Closing Item No. 21

<u>Registered Owner</u>	<u>Principal Amount</u>
Company	210,000
Lincoln Bank	150,000
Duncan & Co.	5,500,000
The Western Saving Fund Society of Philadelphia	2,250,000
Good & Co.	1,250,000
Gerbank & Co.	1,000,000
Sten & Co.	5,000,000
The Penn Mutual Life Insurance Company	2,000,000
Provident Mutual Life Insurance Company of Philadelphia	1,300,000
The Fidelity Mutual Life Insurance Company	600,000
Charter & Co.	500,000
Byrd & Co.	300,000
Pins & Co.	300,000
TOTAL	\$50,000,000

We acknowledge receipt this day of \$50,000,000 in immediately available funds credited to account number 030-628-2, School District of Philadelphia General Fund Account, at your bank.

Will you kindly acknowledge receipt of said Bonds.

THE SCHOOL DISTRICT OF PHILADELPHIA

By ARTHUR W. THOMAS